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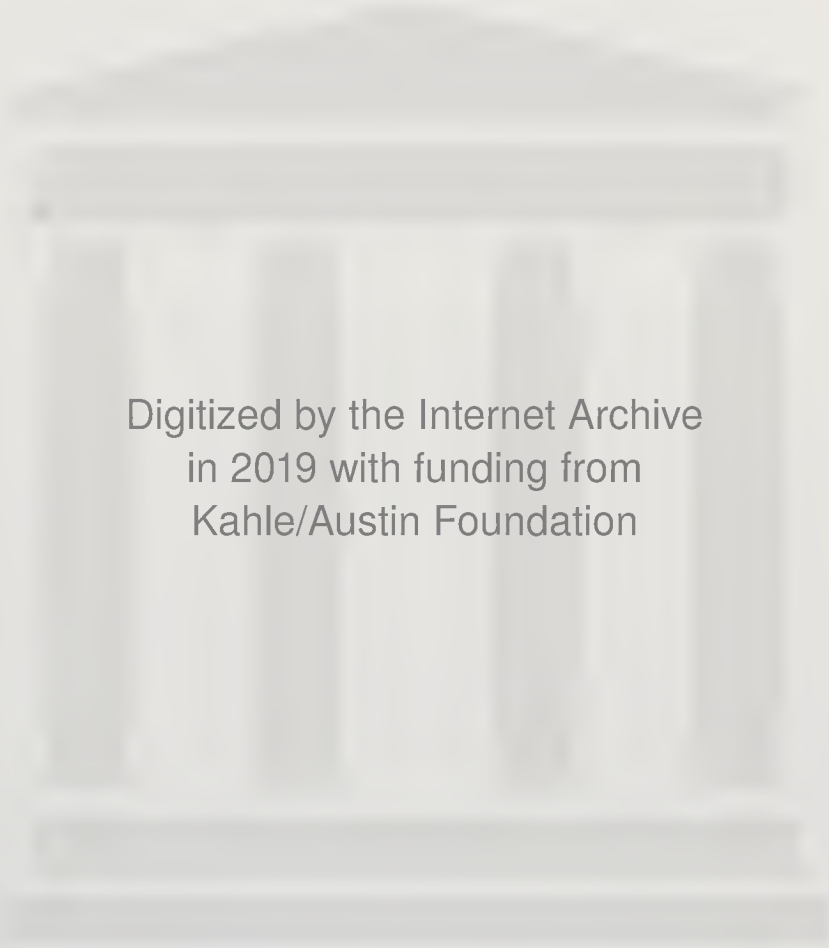

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"THE NATURAL RESOURCES QUESTION"

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THE HISTORICAL BASIS OF PROVINCIAL CLAIMS

By

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The following outline of the Historical Basis of Provincial Claims to the Natural Resources of Manitoba, prepared originally by Professor Martin, under instructions from the Manitoba Government, is reprinted by the University with the permission of the King's Printer, and issued to its graduates and friends in the belief that it will be of great value in crystallizing opinion on one of the most important of current political and economic problems.

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I.

INTRODUCTION:

THE NATURE AND SCOPE OF THE INQUIRY.

A very representative convention of English-speaking and French inhabitants of Assiniboia assembled at Fort Garry (February, 1870) to meet Commissioner Smith, afterwards Lord Strathcona, in order to discuss the terms of union with Canada. With Judge Black presiding, a 'list of rights' was submitted claiming for the 'Local Legislature . . . full control of all the public land.' On at least three other occasions during the process of transfer of Rupert's Land to Canada, less representative sections of the population advanced the same claim. The provincial control of the public domain has been advocated almost continuously for fifty years.

The constitutional principles underlying this claim, however, are much older than the Province of Manitoba or the Dominion of Canada, and the historical basis of provincial 'rights' in respect of the public domain has formed a very distinctive chapter in the constitutional history of the British provinces and Dominions. The public domain has always been, and still remains, in title 'vested in the Crown'①; but two functions with regard to it, viz. (*a*) the administration of the same, and (*b*) the beneficial interest therein, long continued the subject of one of the most interesting constitutional conflicts in our history, until both were unreservedly conceded to self-governing colonies upon their undertaking the duties of 'responsible government.' The claim of the Province of Manitoba in contending for the reversion of her natural resources is based upon this double

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①33 Vic., c. 3, s. 30; 4 & 5 Edw. vii, c. 3, s. 21; 4 & 5 Edw. vii, c. 42, s. 21, etc. Keith, *Responsible Government in the Dominions*, i, 146. Cf. Viscount Haldane in Theodore v. Duncan, Privy Council, May 2, 1919: 'The Crown is one and indivisible throughout the Empire.' *Law Journal Reports*, Oct., 1919, p. 125.

principle as applied to the period of her status as a Canadian province since 1870, and it may be stated briefly as a claim (*a*) to the unrestricted control of the natural resources within her boundaries hitherto unalienated, (*b*) to the ample recognition of her full beneficial interest as a Canadian province not only in these but in those already alienated by 'the Government of Canada for the purposes of the Dominion' since Manitoba acquired self-governing provincial status in the Canadian Confederation.

In a very real sense, therefore, the issue is now as fundamental for this province as was the control of the 'clergy reserves' or of the crown lands during the long controversy for 'responsible government' in Upper Canada. In fact, it is largely the same issue: whether Manitoba is a 'colony' or a province of the Dominion. In this the province is claiming no new principles. The issues which it raises are as old as 'responsible government.' It will be seen that by virtue of the principles then vindicated, all the original provinces of the Dominion acquired the full beneficial control of their public domain long before Confederation. These principles were recognized and perpetuated at Confederation by section 109 of the *British North America Act* of 1867, by which the beneficial control of the public domain was vested in the several provinces. The same principles, elsewhere applied, resulted in the beneficial control of public land by New Zealand, by Newfoundland and by the provinces of the Australian Commonwealth. In fact, so fundamental and so widely recognized are these principles—largely through the Canadian precedent after 'responsible government'—that in all the self-governing provinces and Dominions of the British Empire the Prairie Provinces of Canada constitute the only exception to their operation. Even in the case of other provinces subsequently entering the Canadian Confederation, Manitoba remained for thirty-five years the solitary exception to the rule. In the case of British Columbia, the principles were applied so naturally and so normally that the issue was not even raised for discussion; while in the case of Prince Edward Island, the Dominion assumed obligations for which

it was in no wise responsible in order to endow the province with an equivalent for its public domain alienated by royal grants of the preceding century. For half a century now the Province of Manitoba has been contending for constitutional 'rights' the denial of which was so exceptional as to be an anachronism even in 1870.

The present inquiry, therefore, may be simplified by outlining very briefly at the outset the range of the historical evidence to be examined in the sections to follow:

(II.) As already indicated, the constitutional principles now invoked by Manitoba were established in the conflict for 'responsible government', and the historical background of that conflict is to be found not in Manitoba but in the Province of Canada three generations ago. It was in 'Canada', in fact, that those principles were first vindicated which have since become the common heritage of all British self-governing communities. With regard to the public domain at least, it is in the case nearest home, that of the Prairie Provinces of Canada, that these principles have yet to be applied. As early as 1840 and 1847, as Keith points out, 'the Canadian Parliament received complete control of the lands which were situated in those provinces, and the plan adopted in every case of the grant of responsible government to the Maritime Provinces took the form of a grant of full rights over the lands in exchange for a civil list . . . Canada has not adopted the British ideas in dealing with the land in the new provinces.'① In the section (Chapter II) entitled *British Principles with Regard to the Public Domain*, an outline of these 'full rights over the lands' will be attempted in as brief a space as may be felt to be consistent with the fundamental importance of the principles involved.

(III.) The conditions under which the Hudson's Bay chartered rights in Rupert's Land were surrendered to the Crown by the Hudson's Bay Company, and 'Rupert's Land' (together with the 'North-Western Territory') united to

①Keith, *Responsible Government in the Dominions*, vol. ii, pp. 1047, 1051

Canada by the Crown in 1870, were of a very exceptional nature. The constitutional procedure scrupulously observed in the process of transfer, however, left unimpaired the implications of that procedure for the new district 'as a part of the British Colonial System.'① There were exceptional conditions—among others the payment of £300,000—attached to the preliminary surrender of chartered rights in Rupert's Land to the Crown, and it is safe to say that from these conditions many implications have been sought which are quite unwarranted by the facts. Similarly, the element of so-called 'purchase' has served to conceal in the British constitutional procedure other implications which beyond reasonable doubt are warranted by the facts. In discussing (Chapter III) *The Surrender of Chartered Rights in Rupert's Land and the 'Transfer' to Canada in 1870*, therefore, it will be necessary to examine this element of 'purchase' and the procedure observed in the surrender from the Hudson's Bay Company to the Crown and the transfer from the Crown to Canada.

(IV.) The circumstances under which Manitoba came into Confederation as a province were also very remarkable in that there was no previous period of territorial status. The same Imperial Order in Council which effected the transfer (in pursuance of the *B.N.A. Act* of 1867, section 146 and the *Rupert's Land Act*, 1868, section 3) effected also provincial status for Manitoba by bringing into operation the *Manitoba Act* of 1870. The conditions under which this Act was drawn up, however, were so exceptional that British principles were completely abrogated in connection with the public domain. The terms imposed upon the province by the Dominion provided for the administration of 'all ungranted or waste lands in the Province . . . by the Government of Canada for the purposes of the Dominion.' The circumstances which were held to warrant this contraven-

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①Colonial Office to Governor-General, Nov. 30, 1869, quoted from Order in Council of the Province of Canada, June 22, 1866. *Correspondence connected with Recent Occurrences in the North-West Territories*, Ottawa, 1870, p. 139.

tion of British practice will be discussed in the chapter upon *The 'Transfer' and Provincial Status for Manitoba.*

(V.) Within three years after the transfer of Rupert's Land from the Crown and the creation of the Province of Manitoba, two other provinces entered the Canadian Confederation. British Columbia in 1871 had passed through a development since 1849 which afforded in some respects perhaps the closest parallel to that of Rupert's Land. In both cases the surrender from the Hudson's Bay Company to the Crown had been accompanied by a monetary consideration, but whereas British Columbia came into Confederation with full beneficial control over her public domain, that over Manitoba was retained by Canada 'for the purposes of the Dominion.' The procedure followed in 1871 will be traced (Chapter V) in the outline of *British Principles and Canadian Practice in British Columbia.*

(VI.) The entrance of Prince Edward Island into Confederation in 1873 invites a similar discussion (Chapter VI) of *British Principles and Canadian Practice in Prince Edward Island.* In some respects the case of that province will be found to afford even a closer parallel—and also a sharper contrast—with Manitoba than that of British Columbia. The circumstances were exceptional, and the exceptional measures which were thus found to be necessary illustrate very clearly the principles involved. The belated subsidy 'in lieu of lands' to Manitoba in 1882 was granted 'as is done in Prince Edward Island.'

(VII.) The policy pursued by the Federal Government with regard to the public domain in Manitoba after 1870 affords a humiliating contrast to the British practices which obtained elsewhere in Canada and the Empire. This will be found to apply particularly to the Dominion's attitude of 'ownership' towards Manitoba as the 'property' of Canada, 'purchased,' 'possessed,' and 'administered . . . for the purposes of the Dominion.' This attitude is reflected even in the statutory basis for the federal administration of the public domain as devised in the *Manitoba Act* (afterwards

found to have been largely *ultra vires*) and confirmed by the *B.N.A. Act* of 1871 'for all purposes whatsoever.' The immigration and railway policy of the Dominion burdened the province with intolerable obligations for 'local works' and deprived the provincial treasury at the same time of all 'territorial revenues' from which such expenditures have customarily been met. These conditions, culminating in the humiliating 'finality clause' with regard to the increased 'subsidy in lieu of lands' in 1885, will be outlined in discussing (Chapter VII) *Federal Policy and Provincial Poverty in Manitoba after 1870.*

(VIII.) The implications of the 'subsidy in lieu of lands' in 1882, together with the uncompromising attitude of the Dominion nevertheless with regard to the whole issue of 'provincial rights' over the public domain, will require special consideration in view of the avowal, by the Dominion Government, of American in preference to British principles and procedure. It will be found that American precedents were not only persistently avowed but were perverted in the process for thirty years in the attempt to justify the appropriation of public lands in Manitoba 'for the purposes of the Dominion.' A discussion of this phase of federal policy will be found in the section (Chapter VIII) upon *American Precedents for a British Province.*

(IX.) The return to sound British constitutional principles and an outline of the general application of these to the 'Natural Resources Question' as it now stands will be attempted in the closing section entitled *British Principles in the Ascendant: Province or Colony?*

This introductory outline is summarized below, and at the close of each section will be found a brief summary of the conclusions which seem warranted by the evidence. A recapitulation of these conclusions under the various captions outlined above is appended to this memorandum.

SUMMARY

1. A very representative convention at Fort Garry (February, 1870) claimed among the terms of proposed union with Canada 'full control of all the public land' for the 'Local Legislature.' Similar claims were advanced on at least three other occasions by less representative sections of the community during the process of transfer of Rupert's Land to Canada. The provincial control of the public domain has been advocated almost continuously for fifty years.

2. The principles underlying this claim, however, are much older than the Province of Manitoba or the Dominion of Canada. The public domain has always been, and still remains, in title 'vested in the Crown' which is 'one and indivisible throughout the Empire' (*Lord Haldane in P.C.*); but two functions with regard to it, viz. (*a*) the administration of the same, and (*b*) the beneficial interest therein, were long in dispute until both were unreservedly conceded to self-governing provinces upon their undertaking the duties and obligations of 'responsible government.'

3. The claims of Manitoba are in exact conformity with this double principle as applied to the period of her status as a Canadian province since 1870, viz. (*a*) the unrestricted control of natural resources hitherto unalienated, and (*b*) ample recognition of full beneficial interest not only in these but in those already alienated by 'the Government of Canada for the purposes of the Dominion.'

4. The issue, therefore, is as fundamental as was the control of crown lands, the 'clergy reserves,' etc., in Upper Canada over eighty years ago. In fact it is largely the same issue: whether Manitoba is a 'colony' or a province of the Dominion.

5. The principles then established have been applied everywhere to self-governing provinces under 'responsible government'; to the Maritime Provinces and to 'Canada' long before Confederation; to Newfoundland and New Zealand and the provinces of the Australian Commonwealth; to all the original provinces of the Canadian Confederation as safeguarded by the *B.N.A. Act*, 1867, section 109; to British Columbia and Prince Edward Island which have since entered Confederation; to all the self-governing provinces and Dominions of the Empire, in fact, but the Prairie Provinces of Canada.

6. The present inquiry, therefore, may be simplified by outlining at the outset the range of historical evidence to be examined in the following sections:

(II.) *British Principles with Regard to the Public Domain*, as established in Canada at 'responsible government.'

(III.) The conditions determining *The Surrender of Chartered Rights in Rupert's Land and the 'Transfer' to Canada in 1870.*

(IV.) The circumstances of *The 'Transfer' and Provincial Status for Manitoba* in 1870.

(V.) An examination of *British Principles and Canadian Practice in British Columbia* in 1871.

(VI.) A similar examination of *British Principles and Canadian Practice in Prince Edward Island* in 1873.

(VII.) An outline—in humiliating contrast with British practices elsewhere—of *Federal Policy and Provincial Poverty in Manitoba after 1870.*

(VIII.) A discussion of the 'subsidy in lieu of lands' in 1882 and the federal avowal of *American Precedents for a British Province.*

(IX.) An outline of the return to sound British constitutional principles and their application to the present 'Natural Resources Question': *British Principles in the Ascendant: Province or Colony?*

II.

BRITISH PRINCIPLES WITH REGARD TO THE PUBLIC DOMAIN.

It will not be necessary to review in great detail one of the most signal contributions which the older provinces of Canada were themselves the first to make towards the system of responsible self-government in the provinces and Dominions of the British Commonwealth. The open letters of a Nova Scotian to a Colonial Secretary had a profound effect upon that development. In Upper Canada, the 'clergy reserves' and granting of crown lands formed in many instances the immediate grievances which raised the larger issue and made the outcome almost inevitable. The general results of that conflict are traceable in the institutions of all the self-governing dominions of the Empire. The present inquiry may be restricted to those phases of the conflict which relate to the public domain.

'In the North American Colonies, as in the United States,' wrote Lord Durham in his famous *Report* of 1839, 'the function of authority most full of good or evil consequences has been the disposal of the public land.'① The various distinctive periods of constitutional development have left their mark upon this 'function of authority' at almost every stage. As already pointed out, the public domain has always been, and still remains, 'vested in the Crown,' but the administration of the public domain and the beneficial interest therein may be said to form an integral part of the long conflict which resulted in responsible government. The case of a single district—now the Province of Ontario—may be taken as typical of a practice which was very general in its application and uniform in its results.

During the period from the cession of Canada to Great Britain in 1763 to the calling of the first elective assembly pursuant to the *Constitutional Act* of 1791, the administration 1763-1791

① *Durham's Report*, ed. Lucas, ii, 206.

of the crown lands was vested in the Governor and Council, and formed regularly the subject of official instructions both in the commissions of the successive governors and in detailed instructions drawn up for specific purposes from time to time. During this period, and indeed long afterwards, the 'ungranted and waste lands' were regarded as being vested in the Crown, as being granted by the Crown through duly accredited representatives (with 'full Power and Authority' to grant the same 'upon such terms . . . and under such other Conditions as shall appear to us to be necessary and expedient'①), and as forming insofar as these grants were revenue-producing, the source, in part, of the 'casual and territorial revenues' of the Crown.

1791-1840

Throughout the succeeding period, from the *Constitutional Act* of 1791 to the *Act of Union*, 1840, similar forms of administration and control of crown lands remained theoretically in force, though these became the object of bitter and almost incessant attack during the conflict for responsible government. The *Constitutional Act* itself specifically safeguarded 'the King's prerogative touching the granting of waste lands of the Crown within the said Provinces.'② In the thirty-sixth and following sections of the same Act were made the well-known provisions for 'clergy reserves' which forced the whole question of responsible government in one of its most acute and convincing forms.③

The powers nominally vested in the Governor 'acting with the advice of his Executive Council, devolved in effect, however, entirely upon his Council which was composed of residents of the province entirely without responsibility to the Assembly. 'Having interests of their own to promote, or

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①Royal Proclamation, October 7, 1763. Cf. Commission of Governor Murray, November 21, 1763; Instructions to Governor Murray, December 7, 1763, etc.; *Quebec Act*, 1774 (14 Geo. iii, c. 83, s. 12); Instructions to Lord Dorchester, August 23, 1786, etc.

②31 Geo. iii, c. 31, s. 42.

③'It shall and may be lawful for His Majesty . . . to authorize the Governor . . . to make from and out of the lands of the Crown . . . allotment and appropriation of lands for the support and maintenance of a Protestant clergy . . .' 31 Geo. iii, c. 31, s. 36, *et seq.*

friends whom they desired to benefit, or it may be enemies whom they were willing to injure,' the members of the Council almost uniformly exercised their powers 'for purely colonial purposes' and 'for local or personal objects.'① The notorious practice of 'leader' and 'associates' by which the 'associates' agreed to transfer to a 'leader' or promoter the grants of land which were made (to the maximum area allowed by the land regulations) nominally to themselves, was reduced to a system in Lower Canada until under one administration, that of Sir Robert Shore Milnes, six members of the Executive Council who constituted the Land Board granted about 1,425,000 acres to fewer than 65 individuals. The Lower Canadian Assembly submitted that 'the management of the waste lands of the crown has been vicious and improvident'; and even the Select Committee of the British House of Commons on the *State of the Civil Government of Canada* in 1828 censured the practice of 'making grants of land in large masses to individuals who had held official situations in the Colony.'②

The nominal control over the administration of the crown lands and the beneficial interest therein, however, were still jealously retained in the name of the Crown. As late as 1831, the *Canadian Revenue Control Act* (1 & 2 Will. iv, c. 23) in granting the Assembly of the province the control of the taxes under the *Quebec Revenue Act* of 1774 (14 Geo. iii, c. 88) specifically reserved the 'casual and territorial revenues of the Crown.' The Governor, Lord Aylmer, contended in that year (1831) that these revenues 'stand upon a perfectly different ground from taxes, properly so called. They are enjoyed by the Crown, by virtue of the Royal Prerogative, and are neither more nor less than the proceeds of landed property, which legally and constitutionally belongs to the Sovereign on the throne.'③ Until the *Act of Union*, in fact, the crown lands, as Charles Buller expressed it in his special

①*Report on Public Lands and Emigration*, by Charles Buller for Lord Durham, 1838, *Lord Durham's Report*, ed. Lucas, iii, 37-38.

②Kennedy's *Documents of the Canadian Constitution*, pp. 348, 352.

③See, however, *Lord Durham's Report*, ed. Lucas, i. 185.

report to Lord Durham in 1838, were 'in name the property of the Crown, and under the control of an English minister;① while the Assembly claimed that the administration of the crown lands ought to be entrusted to ministers responsible to the Assembly, and that revenue arising therefrom ought to be under the 'control of the representatives of the people.'②

1840-1867 These claims were definitely conceded by the *Act of Union*, 1840, and by the practice of responsible government subsequently acted upon by British governors. In view of the importance of the principles involved, it may be advisable to trace briefly this final stage of the long controversy until it was definitely closed by Imperial enactment conceding specifically to self-governing provinces, (*a*) the beneficial interest in the public domain, and (*b*) the administration thereof, as indispensable adjuncts of 'responsible government.'

(*a*) *Beneficial Interest.* By the *Act of Union*, 1840, it is provided that 'all the territorial and other revenues now at the disposal of the Crown within the Province of Canada' should be surrendered to the consolidated revenue fund of the province in return for a fixed 'Civil List' of £75,000.③ That is to say, it took here as elsewhere the form of a bargain or compact: the grant of territorial revenues in return for assuming the obligations ('Civil List') of self-government. A similar controversy had been going on, however, in Great Britain itself with regard to the surrender of what were called 'the casual and territorial revenues of the Crown' to the Imperial Parliament. This has been effected by *Civil List Acts*④ passed at the beginning of each reign for the life-time of the sovereign. Since, however, these 'casual and territorial revenues of the Crown,' thus surrendered to the Imperial Parliament by the *Civil List Acts*, included theor-

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①*Lord Durham's Report*, ed. Lucas, iii. 37-38.

②*Ninety-Two Resolutions*, Lower Canadian Assembly, February 21, 1834.

③3 & 4 Vic., c. 35, s. 54.

④1 Will. iv, c. 25, s. 2; 1 & 2 Vic., c. 2, s. 2.

Similar Acts have been passed at the beginning of the reigns of Edward vii and George v (64 Vic. & 1 Edw. vii, c. 4 and 10 Edw. vii & 1 Geo. v, c. 28).

etically the territorial revenues from the crown lands of the whole Empire, it was deemed advisable definitely to renounce by Imperial Act all beneficial interest in these lands. This was effected in 1852 by 15 & 16 Vic., c. 39, which specifically excepted from the 'casual and territorial revenues of the Crown' accruing to the consolidated fund of Great Britain through the *Civil List Acts* all 'monies arising from the sale or other disposition of the lands of the Crown in any of Her Majesty's colonies or foreign possessions.' This Act (15 & 16 Vic., c. 39), therefore, marks the formal concession of the demands of self-governing provinces to full beneficial interest in the public domain within their boundaries.

(*b*) *Administration.* The process of putting the principles of responsible government into practical operation was necessarily slow and tentative. It was not until the time of Lord Elgin that it became a settled policy on the part of the Governor to throw 'the whole weight of responsibility on those who exercise the real power.'① The administration of government, including the whole system of land-granting, etc., thus devolved upon ministers directly responsible to an elective assembly, and the full provincial control of the public domain thus formed a perfectly normal and indeed inevitable development.

Here again in its final stages, however, the principle is established not merely by practice in self-governing provinces but by the express provisions of Imperial statute. Even in the *Act of Union*, 1840, 'Her Majesty's prerogative touching the granting of waste lands of the Crown' had been safeguarded by providing that Canadian bills relating thereto should 'be laid before both Houses of Parliament of the United Kingdom of Great Britain and Ireland' before receiving the royal assent.② By the *Union Act Amendment Act* of 1854 these provisions were repealed and the royal assent could thus be given at once by the Governor to provincial bills relating to the public domain.③ This act may thus be

①Lord Elgin to the Duke of Newcastle, March 26, 1853.
②3 & 4 Vic., c. 35, s. 42.
③17 & 18 Vic., c. 118, s. 6.

said to have completed the process of vesting in the provincial legislatures of Canadian provinces long before Confederation the full control of the actual administration of the crown lands.

The double principle, therefore, of administration of crown lands by provincial legislatures and the enjoyment of the full beneficial interest therein for local purposes came to take the form with which all the provinces of Canada, with the exception of the Prairie Provinces, have since been familiar. The Colonial Office, it will be seen, expressed the latter part of this principle with particular emphasis in negotiating with the Hudson's Bay Company with regard to Rupert's Land. 'It is clear that colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community.'① The beneficial control of the public domain has thus accrued to every self-governing province where the principles of 'responsible government' are applied and pushed to their logical conclusion. It accrued naturally and normally to Newfoundland, New Zealand and the provinces of the Australian Commonwealth. In each case it took the form of a compact; the grant of the beneficial control of the public domain in return for undertaking the duties and obligations of self-government. Both in 'Canada' and the Maritime Provinces 'the plan adopted in every case of the grant of responsible government,' as Keith points out, 'took the form of a grant of full rights over the lands in exchange for a civil list.'②

One phase of the question, indeed, is worthy of special consideration because it affords almost an exact parallel to the policy of the federal government in the administration of the public domain of Manitoba since 1870. Lord Durham, though the apostle of responsible government in many other respects, was prepared to accept at that stage of the development of new provinces (1838), the plans of Gibbon Wakefield

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①*Correspondence relating to the Surrender of Rupert's Land*, 1869, Appendix iii, p. 68.

②*Responsible Government in the Dominions*, ii, 1047.

and Charles Buller for Imperial colonization and control of crown lands: 'I therefore propose that the entire administration of it should be confided to an imperial authority.'①

Charles Buller, whose special report on *Public Lands and Emigration* formed the basis of Durham's recommendations, proposed that all revenues arising from this uniform and logical system of colonization 'should be specifically appropriated to such work as would improve the value of land and facilitate the progress of settlement';② and Lord Durham himself in recommending that 'all the revenues of the Crown . . . should at once be given up to the United Legislature on the concession of an adequate civil list' specifically excepted those and those only which were derived from the public lands.③

It is significant that though Durham's scheme with regard to public lands in that formative period of colonial development has commanded much admiration, the proposal was still-born and the territorial revenues of the crown, as already noted, were conceded in their entirety to the Canadian legislature. As Lucas points out, 'the proposed combination with the grant of responsible government of Imperial control over the public lands'④ was in the nature of things 'impossible.' Even Buller had stated the alternative to Imperial control in terms which leave nothing to be desired:

> 'I am also bound to recommend, that in the event of 'such a course not being deemed expedient, the whole 'control of the property should be vested in the most 'ample and unconditional manner in the Colonial Legisla- 'ture. This is required by every principle of justice.'⑤

Durham's recommendations, therefore, with regard to perhaps the most elaborate and broadly-based scheme of colonization ever devised, remained in Canada a dead letter. The principle of beneficial control by local legislatures was

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①*Lord Durham's Report*, ed. Lucas, ii, 327.
②*Lord Durham's Report*, ed. Lucas, iii, 115.
③*Lord Durham's Report*, ed. Lucas, ii, 327.
④*Lord Durham's Report*, Introduction, i, 182.
⑤*Lord Durham's Report*, ed. Lucas, iii, 39-40.

responsible for vesting in each of the original provinces of Confederation the rights over the public domain which they have enjoyed ever since, and the constitutional rights which they seek to deny to the Prairie Provinces in the twentieth century are thus the same rights which they themselves vindicated—even against the apostle of responsible government in other forms, Lord Durham himself—during the first half of the nineteenth. The arguments employed against the provincial rights of the Prairie Provinces 'would have justified' (to quote the words of one of the most eminent of Canadian constitutionalists on a very memorable occasion) 'the retention by the Imperial government up to the present time of every acre of Crown Lands in Canada.'①

As already indicated, these recognized provincial rights were safeguarded in section 109 of the *B.N.A. Act* of 1867, and so well established were these principles that when British Columbia entered Confederation they were applied to that province automatically without even the formalities of perfunctory discussion.② In Prince Edward Island heavy obligations were gratuitously assumed by the Dominion in order to 'establish this Colony in a position as regards land tenures and territorial revenues, similar to that occupied by the adjoining Provinces.'③ For thirty-five years Manitoba remained the solitary exception to the general rule. The Prairie Provinces of Canada alone among the self-governing provinces and Dominions of the British Empire are still living in respect of our natural resources under 'colonial' conditions, in some respects more reactionary than those which prevailed a hundred years ago in the provinces of British North America. In 1830 the crown lands, as Buller pointed out, were at least administered by residents of the province 'for

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①In discussing these very proposals of Lord Durham. 'It was absolutely impracticable. . . . To the people living in and developing any dependency must be entrusted, and might safety be entrusted, the entire control of the public lands . . .' Sir Robert Borden, *Hansard*, 1905, p. 1462.

②See Chapter V.

③See Chapter VI.

purely colonial purposes' and 'for local or personal objects.'① By statute which the Dominion imposed upon this Province against her will (as expressed on at least four occasions) in respect of public lands,② the natural resources of Manitoba are 'administered by the Government of Canada for the purposes of the Dominion.'③

Canada, therefore (as Keith points out), 'has not adopted the British ideas in dealing with the land in the new provinces,' and the Dominion 'manages to control lands despite the existence of the provinces . . . in a way which would never have been possible to an Imperial power which had no direct share in the ordinary government of the country.'④ Despite our representation in a federal capacity at Ottawa, half a century has passed since British 'rights' to the 'full control of all the public land' were claimed for the 'Local Legislature.' Manitoba has exercised self-government with a 'civil list' for fifty years without receiving, according to British practice, 'full rights over the lands in exchange.' The beneficial control of the public domain is implicit in full provincial status under responsible government, yet the fundamental British principles upon which the historic claims of Manitoba as a Canadian province since 1870 are based, have yet to be applied or even conceded to this province in anything like their logical entirety.

SUMMARY.

1. The claim to (*a*) the administration of the public domain, (*b*) the beneficial interest therein, formed an integral part of the conflict for 'responsible government' in Canada.

2. Both these functions were definitely conceded more than seventy-five years ago to provinces under 'responsible government,' Imperial beneficial control being definitely renounced by statute (15 & 16 Vic., c. 39 and 17 & 18 Vic., c. 118).

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①*Lord Durham's Report*, ed. Lucas, iii, 37-38.

②See Chapter IV.

③*Manitoba Act*, 33 Vic., c. 3. s. 30.

④*Responsible Government in the Dominions*, ii, 1051, 1053.

Both functions, therefore, were implicit in provincial status for all the original provinces of Canada.

3. When these provinces united to form Confederation these rights were confirmed in *B.N.A. Act*, 1867, s. 109.

4. Similarly in Newfoundland, New Zealand, the provinces of the Australian Commonwealth, the same principles are uniformly in operation. 'Colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community.' (*Colonial Office*, 1864, *re* Rupert's Land).

5. 'The plan adopted in every case of the grant of responsible government . . . took the form of a grant of full rights over the lands in exchange for a civil list' (*Keith*), viz., a compact involving the grant of the beneficial control of the public domain in return for undertaking the obligations of self-government. Manitoba has discharged the duties of 'responsible government' with full 'civil list' since 1870 and has been denied for fifty years 'full rights over the lands in exchange.'

6. Even Lord Durham's proposals with regard to Imperial control of crown lands for purposes of scientifically directed colonization were still-born in Canada, and the only alternative was that 'the whole control of the property should be vested in the most ample and unconditional manner in the Colonial Legislature. This is required by every principle of justice.' (*Buller*).

7. The constitutional rights which the original provinces of Confederation now seek to deny to the Prairie Provinces in the twentieth century are the same rights which they themselves vindicated, even against Lord Durham, during the first half of the nineteenth. The arguments employed against the provincial rights of the Prairie Provinces 'would have justified the retention by the Imperial government up to the present time of every acre of Crown Lands in Canada.' (*Sir Robert Borden* in 1905).

8. In respect of public lands, Manitoba is still a 'colony' of the Dominion, with this difference for the worse, that whereas the crown lands before 'responsible government' were administered by residents of the province 'for purely colonial purposes' and 'for local or personal objects' (*Buller*) those of Manitoba are administered, by Dominion statute, 'by the Government of Canada for the purposes of the Dominion.'

III.

THE SURRENDER OF CHARTERED RIGHTS IN RUPERT'S LAND

AND THE

'TRANSFER' TO CANADA, 1870.

The reluctance of the other provinces of Canada to concede to the Prairie Provinces the status which they themselves have always enjoyed has been defended—and in some quarters seems to be defended still—upon the contention that 'Rupert's Land' and the 'North-Western Territory' were 'purchased' from the Hudson's Bay Company and thus became the 'property' of Canada, to be administered 'for the purposes of the Dominion.' The evidence in the case indicates that this view is not warranted by the facts, and that the contention based upon that view has no parallel in British constitutional practice. The negotiations preceding the transfer form a very intricate and complicated process, but the transfer itself would seem to have been effected with scrupulous regard for sound constitutional procedure. The principles involved may perhaps be outlined for all practical purposes by examining (*a*) the nature of the so-called 'purchase,' (*b*) the actual procedure, and implications of that procedure, involved in the surrender of the Hudson's Bay Charter rights over 'Rupert's Land' to the Crown and the transfer of both 'Rupert's Land' and the 'North-Western Territory' by the Crown to Canada.

(A)—The Nature of the 'Purchase.'

The extension westward of the Province of Canada, and after 1867 of the Confederated Dominion, had long been generally accepted in Great Britain and in Canada, and even at the Red River Settlement, as an inevitable development. In 1857 the Select Committee of the British House of Commons in their famous *Report* recommended that 'the

districts on the Red River and the Saskatchewan' should be 'ceded to Canada' by 'arrangements as between Her Majesty's Government and the Hudson's Bay Company.'① In the *British North America Act*, 1867, section 146, provision is made:

> 'on Address from the Houses of Parliament of Canada to 'admit Rupert's Land and the North-Western Territory, 'or either of them, into the Union, on such terms and 'conditions in each case as are in the Addresses expressed 'and as the Queen thinks fit to approve, subject to the 'provisions of this Act.'

Pursuant to this section of the *B.N.A. Act* of 1867 a joint address of the Canadian Senate and House of Commons was passed (December 16 and 17, 1867), praying to be allowed to 'assume the duties and obligations of government as regards these territories' and urging 'the formation therein of political institutions bearing analogy, as far as the circumstances will admit, to those which exist in the several provinces of the Dominion.'

As early as 1864, however, the Hudson's Bay Company expressed a willingness to have the Red River district formed into a Crown Colony. In the preceding year the control of the Company had been purchased by the International Financial Company, and one of the stipulations in connection with the 'introduction of the direct authority of Her Majesty's Government into Rupert's Land' was the retention of an extensive proprietary control of the land by the Hudson's Bay Company.② It was chiefly upon this issue that the Colonial Office refused to entertain the proposal, and the

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①*Report from the Select Committee on the Hudson's Bay Company*, p. iv.

②Negotiations embodied in a series of letters between the Colonial Office and the H.B. Company, dated March 11, April 6, and June 6, 1864, from the Colonial Office and April 13 and December 7, 1864, from the Company. 'The compensation should be derived from the future proceeds of the lands, and of any gold which may be discovered in Rupert's Land, coupled with reservations of defined portions of land to the Company.'

Correspondence relating the the Surrender of Rupert's Land by the Hudson's Bay Company and for the Admission thereof into the Dominion of Canada, 1869, p. 22.

chief reasons are stated in very significant terms by the Colonial Office to Sir Edmund Head:

> 'In an unsettled colony there is no effectual mode of 'taxation for purposes of government and improvement, 'and the whole progress of the Colony depends on the 'liberal and prudent disposal of the land . . .
>
> 'It is clear that colonists of the Anglo-Saxon race look 'upon the land revenue as legitimately belonging to the 'community.'①

When negotiations were resumed, therefore, in 1868-9, with a view to uniting 'Rupert's Land' to the newly formed Canadian Confederation, the claim for 'compensation' was jealously retained by the Company, but the basis was altered to 'the payment . . . of a sum of hard money,' the sum of 'one million sterling, in bonds' being mentioned by the Company as a settlement which 'might be acceptable to our proprietors.'② The Company insisted, moreover, upon another Act of Parliament to guarantee this compensation for the surrender of Charter rights to the Crown, because section 146 of the *B.N.A. Act* of 1867 would have left the claims of the Company at the mercy of Canadian courts.③ It thus came to pass that the instrument under which the surrender was effected was the *Rupert's Land Act*, 31 & 32 Vic., c. 105, which, as the Canadian delegates, Sir George E. Cartier and the Hon. William McDougall, protested, 'was not introduced at the instance or passed in the interest of the Canadian Government'④; and behind the *Rupert's Land Act*, beyond a doubt, certain monetary considerations had already begun to appear.

Now it cannot be emphasized too strongly that Canada contended throughout for the transfer of Rupert's Land to Canada by Imperial Order in Council pursuant to the

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①*Correspondence relating to the Surrender of Rupert's Land*, 1869, Appendix iii, p. 68.

②Lord Kimberley to Colonial Office, October 27, 1868, *Correspondence relating to Surrender of Rupert's Land*, p. 25.

③Id. p. 20.

④Id. p. 45.

B.N.A. Act, 1867, section 146, and without negotiations with any third party in the case. A memorandum drawn up by the Canadian delegates and approved by the Canadian Privy Council, December 28, 1867, expressed

> 'the opinion of the Canadian Government, that it is 'highly expedient that the transfer which the Imperial 'Government has authorized, and the Canadian Parlia- 'ment approved, should not be delayed by negotiations 'or correspondence with private or third parties.' ①

This insistence could be illustrated in great detail, and it is important, because cession by the Crown, so scrupulously observed, it will be seen, in the procedure of the actual transfer, carries with it the implication that the ceded territory was entitled to inherit all the rights as well as obligations attaching (in Manitoba) to self-government and provincial status; that 'its settlement,' as the Colonial Office very significantly pointed out to the Governor-General of Canada on November 30, 1869, was to proceed 'as a part of the British Colonial System.'② Even after the monetary compensation to the Hudson's Bay Company had been agreed upon, the Canadian Privy Council, December 16, 1869, distinguished very clearly between 'the surrender by the Company to the Queen and the transfer by Her Majesty to the Dominion.' In a telegram to the Colonial Office it is urged that 'on surrender by Company to Queen, the Government of the Company ceases. The responsibility of administration of affairs will then rest on Imperial Government. Canada cannot accept transfer unless quiet possession can be given.' The evidence upon this point is very conclusive.

Now the monetary consideration was introduced through the insistence, as already pointed out, of the Hudson's Bay

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①'Whose position, opinions, and claims have heretofore embarrassed both Governments in dealing with this question.' *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 3.

②Quoting, in fact, an Order in Council of the Province of Canada of June 22, 1866. Granville to Young, November 30, 1869, *Correspondence connected with Recent Occurrences in the North-West Territories*, 1870, p. 139.

Company. Had the whole transaction been effected by the *B.N.A. Act*, 1867, section 146, alone, the Company pointed out that their proprietary rights would have been left at the mercy of Canadian courts. The new Act, therefore, the *Rupert's Land Act*, 1868, provided specifically for two things: (*a*) the surrender of all Charter rights in 'Rupert's Land' to the Crown 'upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company,' and (*b*) that by Imperial Order in Council Rupert's Land 'shall, from a Date to be therein mentioned, be admitted into and become a Part of the Dominion of Canada.'① It is noteworthy that the second of these provisions merely reiterates the *B.N.A. Act*, 1867, s. 146, while Canada does not appear at all as yet in the first. The two Canadian delegates lost no time in pointing out that:

> 'The Act 31 & 32 Vic., c. 105 (which was not introduced 'at the instance or passed in the interest of the Canadian 'Government), placed the negotiations of the terms of 'surrender by the Company to the Crown in the hands 'of Her Majesty's Government where . . . we are of 'opinion it must remain.'②

It now becomes possible to trace the way in which Canada became involved in this matter of 'compensation' to the Hudson's Bay Company for the surrender of Charter rights to the Crown. The Dominion was drawn into the monetary bargain between the other two parties in the transaction through the terms of the *Rupert's Land Act*. That measure had been introduced in the House of Lords, but when it reached the House of Commons, section 3 (providing for the surrender of Charter rights by the Company and the acceptance of the surrender under Her Majesty's 'Sign Manual and Signet . . . upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said

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①31 & 32 Vic., c. 105, s. 3 and 5.

②*Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 44.

Governor and Company') was amended by the addition of the following significant proviso:

> 'provided further that no Charge shall be imposed by 'such Terms upon the Consolidated Fund of the United 'Kingdom.'①

It became obvious, therefore, that if a pecuniary compensation 'in hard money' was a *sine qua non* of the surrender of the Hudson's Bay Charter rights in Rupert's Land to the Crown, and if the transaction was to involve 'no Charge . . . upon the Consolidated Fund of the United Kingdom,' it would be necessary for Canada to undertake the indemnity to the Hudson's Bay Company. This was undertaken by the Canadian delegates under protest and without waiving the rights of direct cession from the Crown. The sum of £300,000, it was stated by the Canadian delegates Cartier and McDougall to the Colonial Office, February 8, 1869, was regarded by them as a species of settlement by compromise out of court—the

> 'cost of legal proceedings necessary, if any be necessary, 'to recover possession . . . Compromises of this kind 'are not unknown in private life, and the motives and 'calculations which govern them may be applicable to 'the present case.'②

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① *Hudson's Bay Company Bill (H.L.)*
Commons Amendment. Ordered to be printed, 23rd July, 1868.
The Rupert's Land Act received the royal assent, July 31, 1868.

② *Report of Delegates appointed to negotiate for the Acquisition of Rupert's Land and the North-West Territory*, Ottawa, 1869.

This report was formally approved by Canadian Order in Council, on May 14, 1869.

The negotiations are remarkable for the precision and accuracy of the constitutional terms employed. The only lapse on the part of the Colonial Office would seem to have taken place under vexation at a juncture when the negotiations threatened to break down altogether. Even here the argument of the Under-Secretary is found to be specious to the point of disingenuousness. The Canadian delegates were pressing for 'the immediate transfer of the sovereignty of the whole territory' while the Company was still pressing for the payment of £1,000,000 in 'hard money' or bonds. The Colonial Office, entrenched behind the amendment to the Rupert's Land Act (providing that 'no Charge shall be imposed . . . upon the Consolidated Fund of the United Kingdom') was in a position to disclaim all pecuniary interest and responsibility. Resorting to the language of the

The terms were finally drawn up categorically by the Colonial Office and offered by the Colonial Secretary to the Hudson's Bay Company on March 9, 1869, 'not . . . as a basis of further negotiation, but a final effort to effect that amicable accommodation, of which he has almost despaired.' These terms① were accepted by the Company on April 9 and ratified by a joint address of the Senate and House of Commons of Canada on May 29 and 31, 1869, on the recommendation of the Canadian delegates.

Whatever monetary and proprietary considerations were necessary, therefore, in order to effect the transfer, it is seen that, both in theory and in fact, the surrender of the Hudson's Bay Charter rights in Rupert's Land to the Crown was the only part of the transaction which involved 'compensation' of any kind. This surrender was formally signed and sealed by the Company on November 19, 1869; it was formally accepted by Her Majesty 'under the Sign Manual and Signet' on June 22, 1870, and the transfer of Rupert's Land to Canada did not take place until July 15. The payment of the £300,000, though stipulated in the terms to be paid 'when Rupert's Land is transferred to the Dominion of Canada' was made, as a matter of fact, on May 11, thus synchronizing with the receipt of the deed of surrender by the Colonial Office. The sum of £300,000 which was to be

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counting-house, the Under-Secretary, Rogers, confronted the Company in their demands for 'one million sterling, in bonds' with the uncompromising, not to say truculent, attitude of the Canadian delegates:

> 'You propose that the matter should be settled by the immediate 'payment of a fixed sum of money, or by the delivery of bonds . . .
> 'It is, of course, obvious that this negotiation for the purchase of 'the Hudson's Bay Territory is really between the seller and the buyer, 'the Company and the Colony . . . Her Majesty's Government '. . . can merely offer to act as a channel of accommodation between 'these two real parties to the transaction.' Rogers to Northcote, February 22, 1869, *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 37.

As a matter of fact, the terms, as stated above, were drawn up categorically by the Colonial Office; and the *Rupert's Land Act* had definitely specified 'such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company.' 31 and 32 Vic., c. 105, s. 3.

①*Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 40.

raised by loan guaranteed by the British *Rupert's Land Loan Act* (32 & 33 Vic., c. 101), was there specified as 'for the purpose of payment to the Hudson's Bay Company on the surrender of Rupert's Land,' and the Company was authoritatively informed① that 'the indemnity of £300,000 will be paid on due proof of the completion of their surrender.' The payment of the £300,000 was thus occasioned not by the transfer of Rupert's Land to Canada, for that was effected, it will be seen, by full cession from the Crown; it was exacted by the Hudson's Bay Company as a *sine qua non* for the surrender of their Charter rights in Rupert's Land.

It may thus be contended that the object of both Canada originally and the British Government was not to perpetuate the old system of proprietary administration, the only difference being that it should be continued 'for the purposes of the Dominion' instead of for the purposes of the Hudson's Bay Company, but rather to extinguish altogether the old disabilities under the Charter of the Company in Rupert's Land② by 'its settlement', as the Colonial Secretary pointedly emphasized, 'as a part of the British Colonial System.' In fact the whole transaction would seem to have been expressed nowhere more succintly than by the Canadian delegates themselves:

> 'The surrender of the powers of government and of 'territorial jurisdiction by the Company to the Crown, 'and the transfer of these powers to the Canadian 'Government, are acts of State, authorised by Imperial 'Statute, and will have all the force and permanence of 'fundamental law.'③

Under circumstances such as these, the indemnity of

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①By the agents of Canada, Messrs. Baring and Glyn.

Correspondence connected with the Recent Occurrences in the North-West Territories, 1870, p. 139.

②'Upon the Acceptance by Her Majesty of such Surrender, all Rights of Government and Proprietary Rights, and all other Privileges, Liberties . . . whatsoever, granted . . . to the said Governor and Company within Rupert's Land . . . shall be absolutely extinguished . . .' *Rupert's Land Act*, 1868, section 4.

③*Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 45.

£300,000 to the Hudson's Bay Company, though paid by Canada, no more entitled the Dominion to appropriate without accountability the public domain of Manitoba 'for the purposes of the Dominion'—to deprive the inhabitants of this province, 'as a part of the British . . . System,' of 'full rights over the lands in exchange for a civil list'—than the indemnity paid by Great Britain to the slave-owners in 1834 entitled the Government to retain the slaves in a state of perpetual bondage to the nation.

It may be added that the West is not 'the property' of Canada since the public domain is 'vested in the Crown,'① and that the £300,000 was not 'paid by' the rest of Canada for the West in any case. It was paid immediately by British bankers, and the amount was subsequently raised by Canada (including Manitoba) by public loan guaranteed by British Treasury Warrant of June 18, 1870, pursuant to the *Rupert's Land Loan Act*,② 'the principal to be repaid on 1st April, 1904.'③ The per capita contribution of Manitoba to Dominion customs revenues was for many years the highest in Canada,④ and thus even at the current conception of the status of Manitoba so largely prevalent in Eastern Canada, this province may be said to have discharged rather more than her share of the 'purchase' price of her own public domain.

(B)—THE PROCEDURE AND ITS IMPLICATIONS.

In order to trace this procedure consecutively it would be necessary to outline the Acts, Joint Addresses pursuant thereto, official reports, Orders in Council, etc. (some fifteen in number) by which the surrender of the Hudson's Bay

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①33 Vic., c. 3, s. 30; 4 & 5 Edw. vii, c. 3, s. 21; 4 & 5 Edw. vii, c. 42, s. 21; Keith, *Responsible Government in the Dominions*, i, 146, etc.

②32 & 33 Vic., c. 101. See *Statement of Proceedings taken by the Lords Commissioners of Her Majesty's Treasury to give effect to the Guarantee of a loan for the* £300,000 *authorised by the Act* 32 & 33 Vic., c. 101. June 28, 1870.

③*Return showing Terms on which the Dominion Loans . . . were negotiated in London. Can. Sess. Papers*, 1880, vol. x, Paper No. 75.

④*Memoranda and Statements prepared by the Hon. the Provincial Treasurer of Manitoba*, 1884, p. 11.

Charter rights in Rupert's Land to the Crown and the transfer of 'Rupert's Land' and the 'North-Western Territory' from the Crown to Canada were actually effected. The nature and implications of these, however, may be summarized in general terms without unnecessary detail.

It may be stated at once that scrupulous regard for sound British constitutional procedure was observed throughout the difficult process of transfer, and that the implications of that procedure leave the British principles with regard to self-governing communities—and above all, with regard to Manitoba which was entrusted with provincial status from the first—in full force and operation.

There were, as already pointed out, two distinct transactions involved. The surrender to the Crown of the Hudson's Bay Charter rights in Rupert's Land, involving the 'Surrender of all or any of the Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers and Authorities whatsoever, granted . . . to the said Governor and Company within Rupert's Land,'① was the only part of either transaction which involved 'compensation.' The second transaction was the cession by Imperial Order in Council (June 23, 1870) by the Crown to Canada, not only of 'Rupert's Land' (which could be ceded only after the surrender of the Hudson's Bay Charter rights therein) but of the 'North-Western Territory' which was not within the 'chartered' territory of the Company and could, therefore, be ceded by the Crown without a preliminary 'surrender.' The statutory basis of the first of these transactions was the *Rupert's Land Act*, 1868; that for the second was the *B.N.A. Act*, 1867, section 146, which was reiterated in the *Rupert's Land Act*, section 5, in respect of 'Rupert's Land,' in order that the 'Address from the Houses of Parliament of Canada,' required by both Acts, should include the 'Terms and Conditions . . . agreed upon by and between Her Majesty and the said Governor and Company.' Pursuant to these two Acts the deed of surrender from the Company to the Crown is dated November

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①*Rupert's Land Act*, 1868, section 3.

19, 1869. This surrender was formally accepted by Imperial Order in Council on June 22, 1870, and another Imperial Order in Council of June 23, 1870, provided for the cession to Canada to take place on July 15, 1870. In all these instruments, and particularly in the Imperial Order in Council of June 23, 1870, actually effecting the transfer, there would seem to be nothing more scrupulously precise than this distinction between (*a*) the 'surrender to Her Majesty' of 'all the Rights . . . Privileges . . . Franchises, Powers and Authorities' of the Charter in Rupert's Land, and (*b*) the cession of 'Rupert's Land' and the 'North-Western Territory' (the latter without 'Terms and Conditions') 'to be admitted into and become part of the Dominion of Canada.'①

With regard to the North-Western Territory, therefore, it is to be noted that admission into the Dominion was provided without any 'Terms and Conditions' whatsoever by way of 'compensation' to the Company. By the terms of the *Rupert's Land Act* it is seen that 'such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company' apply exclusively to the 'Surrender of all or any of the Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers, and Authorities whatsoever granted . . . by the said Letters Patent (viz., the Charter of 1670) to the said Governor and Company within Rupert's Land.'② The whole area outside Rupert's Land, therefore, must be regarded as coming to Canada by direct cession from the Crown, pursuant to the *B.N.A. Act*, 1867, section 146, and without even the fictitious appearances of preliminary 'purchase.' As early as April 23, 1868, in fact, when the *Rupert's Land Act* was first proposed, the Colonial Secretary wrote to the Governor-General of Canada that

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①'In pursuance and exercise of the powers vested in Her Majesty by the said Acts of Parliament . . . the said North-Western Territory shall be admitted into and become part of the Dominion of Canada . . . and it is further ordered that . . . Rupert's Land shall . . . be admitted into and become part of the said Dominion of Canada upon the following terms and conditions . . .'

②31 and 32 Vic., c. 105, s. 3.

'with respect to the North-West Territory the same 'obstacles (viz., the necessity of extinguishing Hudson's 'Bay Charter rights) 'do not exist to the transfer of the 'greater part by the Crown to Canada at the present 'time.'①

Similarly, the Canadian Government acted consistently upon this distinction between 'Rupert's Land' and the 'North-Western Territory' when it advocated under the provisions of the *B.N.A. Act*, 1867, section 146:

'either the immediate transfer of the sovereignty of the 'whole territory, subject to the rights of the Company, or 'a transfer of the sovereignty and property of all the 'territory not heretofore validly granted to, and now held 'by the Company under its Charter.'②

The 'licensed'③ as distinct from the 'chartered' territory of the Company was thus ceded to Canada untrammelled by 'Terms and Conditions' of any sort. In fact, a part of this area, the Colonial Secretary (in the letter of April 23, 1868, above quoted) proposed to retain for other purposes:

'A portion of the North-West Territory immediately 'adjacent to British Columbia, I am of the opinion that 'it will be necessary for the public advantage to retain in 'the possession of the Crown, with a view to its incorpora-'tion with British Columbia.'④

The mainland district of British Columbia, in fact, had already (1858) been created out of 'licensed' territory which had stood in exactly the same relationship to the Hudson's Bay Company as the 'North-Western Territory' admitted into Canada in 1870. Over this area British Columbia, it will be seen, assumed almost automatically, in 1871, full beneficial control. Part even of the 'chartered' territory of Rupert's

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①Apr. 23, 1868. *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 12.

②Id. p. 37.

③Licenses granting monopoly of the fur-trade were granted to the Company in 1821, 1838, etc., and applied roughly to the whole area not drained by waters flowing into Hudson Bay.

④*Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 12.

Land, surrendered upon 'Terms and Conditions' in 1870, was subsequently included in the Provinces of Ontario and Quebec; in both cases the new territory was added by federal statute, and in both cases the provinces assumed automatically full beneficial control over the land. Perhaps the most anomalous transaction of all was the granting of the 'railway strip,' through Manitoba to Port Nelson, to Ontario at the *Manitoba Boundaries Extension Act* of 1912, the full rights of property therein being granted to Ontario while the land itself lies within the boundaries of Manitoba. Both 'chartered' and 'licensed' territory ceded to Canada by the Crown in 1870 may without impropriety be placed beneath the beneficial control of any province, it would seem, but Manitoba, Saskatchewan and Alberta.

By the constitutional procedure scrupulously followed in the transfer, therefore, both 'Rupert's Land' and the 'North-Western Territory' came to Canada not from the Hudson's Bay Company by 'purchase' but from the Crown by 'Acts of State authorised by Imperial Statute,' with 'all the force and permanence of fundamental law.'① There were weighty considerations of national policy in 1870 for retaining temporarily a large measure of federal control over these lands in order to facilitate immigration, etc., but the phrase 'for the purposes of the Dominion' in the *Manitoba Act* has constituted for more than fifty years an unwarranted violation of fundamental British principles. In British Columbia, it will be seen,② where the Hudson's Bay Company's rights (by Letters Patent of January 13, 1849) in Vancouver Island had really been 'purchased' in 1867 by the British Government for £57,500, there was no attempt at reimbursement by appropriating the beneficial interest in the public domain 'for the purposes of' Great Britain. British Columbia entered Confederation in 1871 with the full beneficial control of crown lands of the province. By joint address of December

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①*Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 45.

②See Chapter V, and *Can. Sessional Papers*, 1872, Vol. 6, Paper No. 10, Appendix TT.

16 and 17, 1867, the Canadian Houses of Parliament undertook to deal with the native population of Rupert's Land 'in conformity with the equitable principles which have uniformly governed the British Crown.' Similar obligations, advocated by a Canadian Order in Council and enjoined by the Colonial Office, may be held to obtain with regard to this province 'as a part of the British . . . System' since 1870.

SUMMARY

The reluctance of other provinces to concede to Manitoba the status in respect of public domain which they themselves have always enjoyed has long been defended upon the claim that Rupert's Land was 'purchased' from the Hudson's Bay Company and became, therefore, the 'property' of Canada.

(A)—THE NATURE OF THE 'PURCHASE.'

1. The H.B.C. prepared in 1864 to recognize a Crown Colony in Rupert's Land provided the Company retained extensive proprietary control of the land.

2. This proposal was refused by the Colonial Office because 'colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community.'

3. The H.B.C. therefore, demanded (1868-9) 'the payment, as compensation, of a sum of hard money' for the surrender of their chartered rights.

4. Canada, however, insistently urged direct cession by the Crown (by the B.N.A. Act, 1867, s. 146) 'without negotiations with any third party in the case.' Even when indemnity for surrender of chartered rights became necessary, Canadian delegates regarded it as the 'cost of legal proceedings necessary . . . to recover possession.' Conclusive evidence of 'cession' as the official view of Canadian Government.

5. Insistence of H.B.C. on monetary compensation led to the *Rupert's Land Act*, 1868, providing:

(*a*) Surrender of all rights under the Charter in Rupert's Land to the Crown 'upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company.'

(*b*) Union with Canada by Imperial Order in Council as under *B.N.A. Act*, 1867, section 146.

6. Canada was forced into this monetary transaction by amendment to the *Rupert's Land Act* in the House of Commons, by proviso that 'no Charge should be imposed by such Terms upon the Consolidated Fund of the United Kingdom.'

7. Canada, therefore, was forced to indemnify the H.B.C. for the surrender of chartered rights in Rupert's Land to the Crown, and this was the only part of either transaction involving 'compensation' of any kind.

8. Object of whole transfer was not to perpetuate proprietary administration 'for the purposes of the Dominion' but that the old 'Proprietary Rights,' etc., of the Company should be 'absolutely extinguished' (*Ruperts' Land Act*) in order to expedite 'settlement as a part of the British Colonial System.' (*Colonial Office*).

9. The transfer from the Crown to Canada by Order in Council, therefore, was by cession with all constitutional implications unimpaired: 'the surrender . . . by the Company to the Crown and the transfer . . . to the Canadian Government, are Acts of State, authorised by Imperial Statute, and will have all the force and permanence of fundamental law' (*Canadian delegates*).

10. The £300,000 was raised by loan, guaranteed by the British Government, 'the principal to be repaid on 1st April, 1904.'

(B)—THE PROCEDURE AND ITS IMPLICATIONS.

1. Two distinct and fundamental transactions were involved:

(*a*) surrender of the Hudson's Bay Charter rights in Rupert's Land to the Crown 'upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company;'

(*b*) cession of 'Rupert's Land' and 'North-Western Territory' to Canada by Imperial Order in Council of June 23, 1870.

2. The statutory basis of (*a*) was *Rupert's Land Act*; that of (*b*) was *B.N.A. Act*, 1867, section 146, reiterated in *Rupert's Land Act*, section 5.

3. The surrender of chartered rights in Rupert's Land by the Hudson's Bay Company to the Crown was dated November 19, 1869; the surrender was received by the Colonial Office and £300,000 paid on May 11, 1870; the

surrender of chartered rights was formally accepted by the Crown by Order in Council of June 22, 1870; 'Rupert's Land' and 'North-Western Territory' united to Canada on July 15 by Imperial Order in Council of June 23, 1870.

4. The 'Terms and Conditions' involving 'compensation' provided for in the *Rupert's Land Act* apply exclusively to Rupert's Land. The whole area outside Rupert's Land ('the North-Western Territory'), therefore, must be regarded as coming directly to Canada from the Crown by cession under *B.N.A. Act*, 1867, section 146, and without even the fictitious appearances of preliminary 'purchase.' This is clear from the correspondence of the Colonial Office at the time of the *Rupert's Land Act*, the attitude of the Canadian Government, etc.

5. Mainland district of British Columbia already created (1858) out of 'licensed' territory in same relationship to H.B.C. as 'North-Western Territory', yet full beneficial control of public domain was vested in B.C. in 1871.

6. Similarly, districts from the 'chartered' territory of Rupert's Land were added both to Ontario and to Quebec, with full beneficial control vested in these provinces, despite so-called 'purchase' by Canada in 1870. Even within boundaries of Manitoba, Ontario was granted property rights over 'railway strip' to Port Nelson at the *Manitoba Boundaries Extension Act* of 1912.

7. Manitoba, Saskatchewan and Alberta appear to be the only provinces of Canada which cannot be entrusted with beneficial control over either the 'licensed' or 'chartered' territory of the H.B.C. ceded to Canada in 1870.

8. By the constitutional procedure scrupulously followed in the transfer, therefore, both Rupert's Land and the North-Western Territory came to Canada not from the H.B.C. by 'purchase' but from the Crown by 'Acts of State, authorised by Imperial Statute' with 'all the force and permanence of fundamental law.'

9. In 1871, British Columbia (see Chapter V) received full beneficial control over public domain, both 'licensed' area ceded in 1858 and Vancouver Island which has been re-purchased from the H.B.C. in 1867 for £57,500. It is submitted that Manitoba is entitled to the same fundamental rights as from 1870, 'as a part of the British . . . System.'

IV.

THE 'TRANSFER' AND PROVINCIAL STATUS FOR MANITOBA.

The Manitoba Act of the Dominion Parliament (subsequently confirmed by the *B.N.A. Act* of 1871) received the vice-regal assent on May 12, 1870. It was to come into effect 'On, from and after the day upon which the Queen . . . shall, by Order in Council in that behalf, admit Rupert's Land and the North-Western Territory into the Union or Dominion of Canada';① so that Manitoba has never occupied any other than provincial status in the Canadian Confederation. The same Order in Council of June 23, 1870, which transferred Rupert's Land from the Crown to Canada on July 15 of that year thus made Manitoba a Canadian province; and the British principles already outlined apply here with peculiar directness and cogency to the whole Canadian period of our history since 1870.

Neither the Colonial Office nor the Canadian Government had contemplated the immediate establishment of provincial government in Rupert's Land. Canada promised a 'liberal constitution' as soon as 'the wants and requirements of the Territory' should be ascertained.② Even the inhabitants at Red River were not at first in favor of provincial status, and in fact expressed themselves against it on the only occasion when their wishes were formally consulted in the matter. At the Convention of both English-speaking and French at Fort Garry to meet Donald Smith, afterwards Lord Strathcona, as Canadian Commissioner, Riel inquired 'if the Canadian Government would consent to receive them as a Province' and Smith replied that 'it had not been referred to when I was at Ottawa.' When the matter was

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①33 Vic., c. 3, s. 1.

②Howe (Secretary of State for the Provinces) to McDougall, Dec. 7, 1869.

put to the vote, Riel's proposal was overwhelmingly defeated (Feb. 4, 1870)① and the 'list of rights' which the Commissioner then proceeded to discuss was drawn up upon the basis of admission as a territory. The English-speaking population long remained in ignorance of the influences which eventually resulted in provincial status in the *Manitoba Act* of 1870.

The forces that resulted in the establishment of Manitoba as 'a Province, which shall be one of the Provinces of the Dominion of Canada',② were very intimately associated with the Riel Insurrection. The weight of French clerical influence at the Red River Settlement, supported by discerning influence in Quebec, sought to safeguard special rights of language, religion, schools, etc., in the West before these should be swept away by the prospective deluge of immigration. Archbishop Taché of St. Boniface, on his way to Rome in 1869, wrote bitterly to Sir George E. Cartier of the prospective 'ruin of that which has cost us so dear':

> 'I have always feared the entrance of the North-West 'into Confederation because I have always believed that 'the French Catholic element would be sacrificed; but I 'tell you frankly that it had never occurred to me that 'our rights would be so quickly and so completely 'forgotten.'③

In Archbishop Taché's absence, the movement was left largely in the hands of the Rev. J. N. Ritchot, of St. Norbert, while preparations for actual resistance went forward beneath the vainglorious leadership of Louis Riel. An Act of Parliament embodying special terms of union, separate schools, the official use of the French language, reserves of land for the Métis, etc., would obviously be a more enduring safeguard than the most explicit declaration of policy. Despite Riel's failure to carry the Convention of February, 1870, in favor of provincial status, the *Manitoba Act* was eventually drawn

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① *New Nation*, February 11, 1870.
②33 Vic., c. 3, s. 1.
③Vie de Mgr. Taché, Dom Benoit, Vol. ii, p. 7.

up under circumstances which made provincial status the path of least resistance for the Federal Government. The rest of Canada, however, in exasperation at the deeds of a few hundred Métis in 1870 at the Red River Settlement, has penalized the rest of the province for fifty years. Beyond a doubt, the seizure of Fort Garry by Riel, the plundering of the Hudson's Bay stores, the expulsion of the Hon. Mr. McDougall from the territory, the imprisonment of Canadian citizens, and finally the death of Thomas Scott, who was shot in cold blood on March 4, 1870, explain much of the undiscriminating bitterness of the Eastern Provinces for many years against the West. With regard to the one great issue upon which it will be seen all sections at the Red River Settlement were in agreement—'full control of all the public land' for the 'Local Legislature'—Manitoba has paid a heavy price for the Riel Insurrection. 'They wished . . . to have all the land within the boundary, as in other Provinces,' said Sir John A. Macdonald during the debate upon the *Manitoba Bill*:

> 'The land could not be handed over to them . . .
> 'It would be injudicious to have a large Province which
> '. . . might interfere with the general policy of the
> 'Government . . . Besides the land legislation of
> 'the Province might be obstructive to immigration.'

This province alone among all the provinces of the Dominion inherited an unenviable prejudice which long impeded progress and deferred the recognition of the solid achievements of later years. It is submitted that the time has come for the burial of ancient and meaningless prejudices, and for the application to the administration of the public domain of simple British principles which ought never to have been abrogated or denied.

The *Manitoba Bill* was drawn up in Ottawa in consultation with three delegates from the Red River Settlement, the Rev. J. N. Ritchot, Judge Black and Alfred Scott. The negotiations, moreover, in which Père Ritchot thus came to wield prepondering influence were conducted, as it was afterwards established, not upon the basis of the 'list of

rights' discussed with Commissioner Smith at the Convention of February, 1870, but upon a secret list (drawn up at Bishop's Palace, St. Boniface) which remained unknown to the inhabitants of Manitoba for nineteen years until it was published by Archbishop Taché during the discussion of the 'Manitoba School Question.'① It will be admitted that the *Manitoba Act* as an instrument of Union was not the result—as was the admission of every other province, either before or since, into Confederation—of mutual legislative agreement between Canada and the prospective province. Riel had instructed the delegates to Ottawa to report at Red River upon their mission, but both the British and Canadian authorities refused to regard the *Manitoba Act* as 'subject to confirmation by the "Provisional Government" '.② Manitoba was thus unique among the provinces of the Dominion in that many of the terms of Union—and particularly those relating to the public domain—were imposed upon the inhabitants of the new province not only without their consent but even without their knowledge.

It must be admitted, moreover, that Section 30, relating to the beneficial control of the public domain, was unique even among the provisions of the *Manitoba Act*. By this section (33 Vic., c. 3, s. 30) it is provided that:

> 'All ungranted or waste lands in the Province shall be, 'from and after the said transfer, vested in the Crown, 'and administered by the Government of Canada for the 'purposes of the Dominion.'

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①Letter of Archbishop Taché, *Winnipeg Free Press*, December 27, 1889; *Weekly Free Press*, January 16, 1890. 'That list was the only basis of our negotiations.' Rev. J. N. Ritchot to Archbishop Taché, January 13, 1890. *Ibid.* 'Sir George Cartier told me how the Government of Ottawa was embarrassed and annoyed when the delegates refused to negotiate on the Bill of Rights prepared by the Convention.' (*Archbishop Taché*).

②Letter of Sir Clinton Murdock, confidential representative of the British Government, Ottawa, April 28, 1870: 'The condition which . . . was conveyed to Judge Black and the other delegates in writing that whatever was agreed to here must be subject to confirmation by "the Provisional Government" would have involved a recognition of Riel and his associates and would have enabled him to postpone indefinitely the transfer of the Territory.'

Unfortunately the special privileges embodied for the French in the *Manitoba Act*, and particularly the offer of a direct grant of 1,400,000 acres of land 'for the benefit of the families of the half-breed residents' (33 Vic., c. 3, s. 31) were inducements which speedily removed the opposition of the French Métis to the federal control of provincial lands.① No precautions were taken to safeguard in the statute even the right—as distinct from the immediate claim—to the ultimate control of the land and the full beneficial interest therein as from the inception of 'responsible government' and provincial status in a British Dominion.

The incidents outlined above are strongly confirmed by the fact that whatever considerations of national policy may have actuated the Federal Government in exercising, under the circumstances, temporary 'control' over the public domain in 1870, the provisions in Section 30 of the *Manitoba Act* are known to have contravened the wishes of the inhabitants as indicated in every existing record of their demands at that time. This is true not merely of the 'lists of rights' drawn up at various times under Riel's influence. It is conspicuously true of the great mass of English-speaking as well as French inhabitants of the Settlement, and this will be seen to be the case by the most casual examination of the evidence upon this point.

During the period from November, 1869, to April, 1870, there are on record no fewer than four of these lists of rights:

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①Archbishop Taché's letter, *Winnipeg Free Press*, December 27, 1889: 'To condone for this refusal (of the "control of all the lands of the North-west by the Local Legislature") they gave to the children of the half-breed inhabitants of the country one million four hundred thousand acres of land, which had not been asked for, and with the understanding that by and by they would also give some lands to the parents of these children and to other old settlers.'

The temporary 'control' of the public domain (as distinct from the 'beneficial interest' therein) by the Dominion in 1870, has been largely supported both then and since. Archbishop Taché states that 'both the Imperial (probably referring to Sir Clinton Murdock's confidential British mission to Ottawa) and Canadian authorities refused to accede' to the 'control of all the lands of the Northwest by the Local Legislature.' *Ibid.*

(*a*) That of December 1, 1869, drawn up by Riel and his followers, and showing the least insistence of all upon local control over the public domain. Clauses 6 and 7 of this list are as follows:

> '6. That a portion of the Public Lands be appropriated 'to the benefit of Schools, the building of Bridges, Roads, 'and Public Buildings.
>
> '7. That it be guaranteed to connect Winnipeg by Rail 'with the nearest line of Railway within a term of five 'years; the Land Grant to be subject to the Local 'Legislature.'①

(*b*) At the very representative Convention called to meet Commissioner Smith at Fort Garry in February, 1870, a committee was appointed to draft a 'list of rights' as a basis of discussion. Two lists were drawn up: one on the basis of provincial status (drawn up under Riel's influence but thrown out, as already noticed, by the Convention without being read or discussed), and the other on the basis of territorial status. This list was discussed clause by clause, and to each one Commissioner Smith replied for the Canadian Government. Clause 17 reads as follows:

> '17. That the Local Legislature of this Territory have 'full control of all the public land inside a circumference, 'having Upper Fort Garry as the centre, and that the 'radii of this circumference be the number of miles that 'the American line is distant from Fort Garry.'

Commissioner Smith replied in part, that 'full and substantial justice will be done in the matter.'② This entire list must be regarded as the only one to which the inhabitants of the Red River Settlement as a whole can be said to have given their approval, and it is to be noticed that the demand for the control of the public lands even under territorial status is made in the most explicit terms.

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①*Recent Disturbances in the Red River Settlement*, 1870, p. 76.
②*Recent Disturbances in the Red River Settlement*, 1870, p. 157.

(*c*) The list drawn up on the basis of provincial status was supplied nevertheless by Thomas Bunn as 'Secretary of State' of Riel's 'Provisional Government' to the three local delegates who eventually proceeded to Ottawa, and it was printed in French at the Settlement on the eve of their departure. This list was erroneously considered to have furnished the basis of the conference on the *Manitoba Bill* at Ottawa and it was printed accordingly in the British blue-book, *Recent Disturbances in the Red River Settlement*, 1870. In this list clause 11 reads as follows:

> '11. That the Local Legislature of the Province of 'Assiniboia shall have full control over all the public 'lands of the Province, and the right to amend all acts 'or arrangements made or entered into with reference to 'the public lands of Rupert's Land and the North-West, 'now called the Province of Assiniboia.'①

(*d*) The secret list of rights upon which Father Ritchot based the discussion of the *Manitoba Bill* at Ottawa, and containing in substance for the first time, for instance, the famous 'school clause' eventually embodied in Section 22 of the *Manitoba Act*, was drawn up secretly, as already stated, at Bishop's Palace, St. Boniface, and was first published eighteen years afterwards by Archbishop Taché during the school controversy. In this list clause 11 reads as follows:

> '11. That the Local Legislature of this Province shall 'have full control over all the lands of the Northwest.'②

It is seen, therefore, that in respect of public lands the *Manitoba Act* contravened every formal expression of opinion, both English-speaking and French, in every list of rights drawn up at the Red River Settlement during the process of transfer. There were undoubtedly many weighty reasons of national policy for retaining federal 'control' of the public domain in 1870, such for instance as a uniform policy of immigration, the requirements of transcontinental com-

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①*Recent Disturbances in the Red River Settlement*, 1870, p. 130.
②Archbishop Taché's Letter in the *Free Press*, December 27, 1889.

munications in order to bring British Columbia into Confederation, etc. Whatever may be thought of the provision that the land should be 'vested in the Crown and administered by the Government of Canada,' however, the indefensible phrase 'for the purposes of the Dominion' can never appear in any other light than an unwarranted and deliberate violation of the fiduciary obligations which Canada had volunteered to undertake with regard to these territories 'as a part of the British Colonial System' and 'in conformity with the equitable principles which have uniformly governed the British Crown.' The statutory appropriation of the beneficial interest as well as the control over the public domain of the West was repeated in the *Alberta* and *Saskatchewan Acts* (3 & 4, Edw. vii, c. 3. s. 21 and 3 & 4, Edw. vii, c. 42, s. 21, respectively) and even in the *Manitoba Boundaries Extension Act* of 1912. This province, therefore, has the unenviable distinction among the provinces of Canada and the self-governing Dominions of the Empire, not only of having been born into 'colonial' subordination in respect of public lands by provisions in the *Manitoba Act* contravening every recorded expression of the demands of the inhabitants of the country, but of having had the serf's collar riveted, even in adult manhood, by statutory re-enactment in the harshest and most uncompromising terms.

SUMMARY.

1. The *Manitoba Act* provided that upon transfer to Canada by Imperial Order in Council, Manitoba should be 'one of the Provinces of the Dominion of Canada.' In the case of this province, therefore, there has been no preliminary period of territorial status, and British principles thus apply with peculiar cogency and directness to the whole Canadian period of our history since 1870.

2. The animosities of the Riel Insurrection and the motives under which provincial status was sought and secured in the *Manitoba Act* long inspired an unenviable and rather undiscriminating prejudice against this province.

3. With regard particularly to the beneficial control of the public domain, the conduct of Riel in 1870 has penalized the

rest of the province for fifty years. 'They wished to have all the lands . . . as in other Provinces . . . The land could not be handed over to them . . . A large Province . . . might interfere with the general policy of the Government . . . The land legislation of the Province might be obstructive to immigration.' (*Sir John A. Macdonald* in debate on *Manitoba Bill*).

4. The *Manitoba Act* was based on a secret 'list of rights' which remained generally unknown to the inhabitants of Manitoba for nineteen years. Both the British and Canadian authorities refused to regard the *Manitoba Act* as 'subject to confirmation by the "Provisional Government" which would have involved a recognition of Riel and his associates.' (*Sir Clinton Murdock*). Manitoba was unique, therefore, among the provinces of Canada in that many of the terms of union —and particularly those relating to the public domain— were imposed upon the inhabitants of this province not only without their consent but even without their knowledge.

5. Section 30 providing for the administration of 'All ungranted or waste lands . . . by the Government of Canada for the purposes of the Dominion' was unique even among the provisions of the *Manitoba Act*. 'To condone for this refusal' (of the 'control of all the lands of the North-west') the Dominion Government 'gave to the children of the half-breed inhabitants . . . one million four hundred thousand acres of land, which had not been asked for.' (*Archbishop Taché*). With this removal of opposition to federal control of provincial lands, no precautions were taken to safeguard for the future the territorial rights of Manitoba as a British and Canadian province.

6. It is noteworthy that the provisions in the *Manitoba Act* relating to the public domain contravened every expression of opinion, both English-speaking and French, in every list of rights drawn up during the process of transfer. 'Full control of all the public land' for the 'Local Legislature' had been stipulated by the Convention of February, 1870, even upon the basis of territorial status.

7. Whatever the requirements of the hour may have been, therefore, with regard to the temporary 'control' of the public domain of the Province in 1870, the indefensible phrase 'for the purposes of the Dominion' in the *Manitoba Act* must be regarded as an unwarranted and deliberate violation of fiduciary obligations on the part of the Dominion.

The repetition of this phrase in the *Saskatchewan Act*, the *Alberta Act*, and even in 1912 in the *Manitoba Boundaries Extension Act* would seem to indicate in the harshest and most uncompromising terms the definite 'colonial' subordination of the Prairie Provinces.

V.

BRITISH PRINCIPLES AND CANADIAN PRACTICE IN BRITISH COLUMBIA.

Before discussing the policy of the Federal Government towards this province after 1870, it may be advisable to trace the application of the fundamental British principles already outlined to the cases of British Columbia and Prince Edward Island. Both of these provinces entered Confederation subsequent to the *Manitoba Act*. In both cases Canadian practice conforms to British principles in a manner not only just but generous to the new provinces. In both cases provincial control of natural resources was conceded as the normal right of self-governing Canadian provinces. In the one case, it was conceded without even raising the issue. In the other, where public lands had already been alienated since the preceding century by royal grants, the Federal Government undertook not only to indemnify the new province by an allowance 'in lieu of the lands thus granted by the Crown' under conditions for which the Canadian Government was in no way responsible, but undertook by public loan to enable Prince Edward Island to expropriate the estates of the 'proprietors' in order to dispose of the new 'public domain' thus re-acquired to resident settlers. In both cases the contrast with the federal policy towards Manitoba would seem to be complete.

The area which entered Confederation in 1871 as the province of British Columbia comprised two districts of widely varying history and development. Vancouver Island had been granted, by Letters Patent of January 13, 1849, to the Hudson's Bay Company, 'in free and common soccage.'①

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①' . . . Unto the said Company and their successors, the said Vancouver Island, together with all Royalties of the Seas, upon the Coasts within the limits therein mentioned, and all mines Royal thereto belonging, to be holden of Her said Majesty, Her Heirs and Successors, in free and common soccage at the yearly rent of seven shillings.' *Report on British Columbia, Can. Sessional Papers*, 1872, No. 5, Paper No. 10, Appendix TT, p. 237.

On April 3, 1867, however, it reverted by purchase to the Crown. In the Letters Patent of January 13, 1849, the Crown had reserved the right 'to repurchase and take from the said Company, the said Vancouver Island, and premises thereon granted' at the expiration of the Company's license of exclusive trade with the Indians granted in 1838 for a period of twenty-one years. By Indenture of April 3, 1867, therefore, it is provided that:

> 'In consideration of the sum of fifty-seven thousand five 'hundred pounds, so paid by or on behalf of Her said 'Majesty to the said Company . . . they the said 'Company do for themselves and their successors by 'these presents, grant, convey, yield up and surrender 'unto Her said Majesty, Her Heirs and Successors, all 'that the said Island called Vancouver Island, together 'with all Royalties of the Seas . . . and all mines 'Royal, and all rights . . . and appurtenances what-'soever to the said Island.'

It is to be observed that Vancouver Island, like Rupert's Land, had been granted to the Company by the Crown 'in free and common soccage'① and that in both cases the surrender to the Crown was effected by 'the payment . . . of a sum of hard money.' In the case of the surrender of Vancouver Island to the British Government in 1867, however, the payment of £57,500 in no wise impaired the British principle that 'colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community.'② Neither the control of the land nor the beneficial interest therein was appropriated by the Imperial Government because Vancouver Island had been 'purchased' from the Hudson's Bay Company in 1867. There was no attempt to indemnify the British Government for such expenditure by

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①Cf. *Hudson's Bay Charter*, 1670, with regard to Rupert's Land: 'to be holden of us, our heirs and successors . . . in free and common soccage . . . yielding and paying yearly to us . . . for the same, two elks and two black beavers . . .' *Report from the Select Committee on the Hudson's Bay Company*, 1857, pp. 407 *et seq.*

②Colonial Office to Sir Edmund Head, *Correspondence relating to the Surrender of Rupert's Land*, 1869, Appendix iii, p. 68.

administering the land 'for the purposes of' Great Britain.① The control of the public domain and the beneficial interest therein passed automatically, it will be seen, into the hands of the province of British Columbia in 1871.

Meanwhile, government on the mainland was provided in 1858 (21 & 22 Vic., c. 99) and the name 'British Columbia' was then applied to this colony. It is to be observed that this whole mainland district—extended by 26 & 27 Vic., c. 83 north to the 60th parallel of north latitude and east to the Rocky Mountains and the 120th meridian of west longitude—was created out of the 'licensed' area of the Hudson's Bay Territories, which had previously stood in precisely the same relationship to the Hudson's Bay Company as the 'North-Western Territory' (as distinct from 'Rupert's Land' or the 'chartered' area under the Company) out of which the Prairie Provinces were largely created. The British Government emancipated both the 'granted' and 'licensed' areas of Vancouver Island and British Columbia as a step towards self-government, including the full beneficial control of the public lands; whereas Canada, having acquired from the Crown both the 'chartered' and 'licensed' areas of 'Rupert's Land' and the 'North-Western Territory' in 1870, has parted with the beneficial control only of the areas which have been added to the provinces of Ontario and Quebec. Those within the boundaries of the Prairie Provinces have been "administered by the Government of Canada for the purposes of the Dominion.' The contrast is increased by the fact that the final stages of 'responsible government' and beneficial control of the public domain in British Columbia were effected by the Dominion itself without contesting or even discussing the issue.

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①Cf. Sir John A. Macdonald on the *Manitoba Bill:* 'By obtaining control of these lands they would be able to obtain means by which they would be in a position to obtain repayment of the disbursement of the £300,000 for the purchase and of the expenditure which they might be hereafter put to. The expense would be defrayed by that means instead of being charged against the people of the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick. That could be done, however, only by carrying out that policy of keeping the control of the lands of the country, and . . . they had determined to do so.'

These two districts—Vancouver Island and 'British Columbia'—were united in 1866 (29 & 30, Vic., c. 67) under the name of British Columbia, and this was the 'colony' which entered Confederation in 1871 as the province of that name. Like the Prairie Provinces, therefore, it comprised one 'licensed' and one 'granted' area of the Company, and the 'granted' area had been 'purchased' back by the Crown, not like Rupert's Land by 'compromise' representing the 'cost of legal proceedings necessary . . . to recover possession' with a view to the appropriation of its resources 'for the purposes of the Dominion,' but by direct 'purchase' by the Crown as a step towards self-government. British Columbia is now a full province, Manitoba in respect of public lands is still a 'colony' of the Dominion.

It will be remembered that 'responsible government' in every case of the original provinces of Canada 'took the form of a grant of full rights over the lands in exchange for a civil list.'① It is noteworthy in the case of British Columbia that the beneficial control of the public domain was conceded in principle even before there was 'responsible' or even fully representative government. In fact, there was no 'responsible government' in British Columbia prior to entrance into Confederation in 1871. This applies both to the period before the union of Vancouver Island and 'British Columbia' (on the mainland) into one province of British Columbia in 1866, and to the subsequent period before the entrance into Confederation in 1871. Even during the latter period the elective element in the legislative council of the colony was in a minority. About one-third of its members consisted of appointed executive officials of the government, one-third of magistrates from the various districts, and one-third only 'elected by the residents of the different electoral districts.' It was in clause 14 of the terms of union with Canada, in fact, that provision was first made for 'the introduction of responsible government when desired by the inhabitants of British Columbia';② with the additional stipulation that:

①Keith, *Responsible Government in the Dominions*, ii, 1047.
②*Can. Sessional Papers*, 1871, No. 4, Paper No. 18.

'it is the intention of the Governor of British Columbia, 'under the authority of the Secretary of State for the 'Colonies, to amend the existing constitution of the 'Legislature by providing that a majority of its Members 'shall be elective . . .'

This provision, as a matter of fact, was carried out only by Order in Council of August 9, 1870, providing for nine 'elective' and six 'appointed' members; and the new legislative council met for the first time only on January 5, 1871, in time to accept the terms of union tentatively fixed by the Governor in the previous July, and to embody those terms in a formal address to the Queen as provided by the *B.N.A. Act* of 1867, section 146. The fact here emphasized is that British Columbia is entrusted with the beneficial control of her lands as a Canadian province before she enjoyed even a fully elective legislative council, to say nothing of 'responsible government'; while Manitoba with all the governmental machinery of full provincial status in the *Manitoba Act* was deprived by the most explicit statutory enactment of the beneficial control of her own public domain for the purposes of the Province of Manitoba.

The terms of union with Canada, though widely discussed in British Columbia and eventually passed by a legislative council predominantly elective in character, had been drawn up by Governor Musgrave, who had assumed office in August, 1869, under direct instructions from Downing Street to carry the union. The Colonial Secretary (Lord Granville) wrote to Governor Musgrave (August 14, 1869) in part as follows:

'The constitution of British Columbia will oblige the 'Governor to enter personally upon many questions '. . . with which, in the case of a negotiation between 'two responsible governments, he would not be bound to 'concern himself.'①

Now it is a very significant fact that the terms of union as drawn up under these circumstances by Governor Mus-

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①*Can. Sessional Papers*, 1870, No. 5, Paper No. 31.

grave and submitted to the legislative council contain no specific references whatever to the public domain beyond the general provisions in clause 16:

> 'The Provisions in "The B.N.A. Act, 1867" shall . . . 'be applicable to British Columbia in the same way and 'to the like extent as they apply to the other Provinces 'of the Dominion, and as if the Colony of British Colum- 'bia had been one of the Provinces originally united by 'the said Act.'①

Nor is there any specific reference to the control of the public domain in the terms approved by the Canadian Privy Council (July 1, 1870) beyond the repetition of the above provisions in section 10 of the list there agreed upon.② The full control of the public domain by the province is taken for granted. The issue is neither formally discussed nor even raised; nor is it even indirectly referred to except by implication in clause 11 to be noted presently. This fact is the more remarkable in that it was enunciated as a general principle of the Canadian constitution by the Minister of Justice, the Hon. Mr. Fournier, that 'Whatever right has not been given to the Provinces is vested in the Dominion.'③ Despite the fact that the beneficial control of the public domain is nowhere specifically assigned to British Columbia by the terms of union, recognized British principles have prevailed so naturally and so normally that the new province secured the beneficial control of her public domain with the first provisions for 'the introduction of responsible government when desired by the inhabitants of British Columbia.'④

The principle here involved becomes very clear in clause 11 (above referred to) of the officially ratified terms of union. This clause reads, in part, as follows:

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①*Can. Sessional Papers*, 1871, No. 4, Paper No. 18, p. 6.

②*Can. Sessional Papers*, 1871, No. 4, Paper No. 18, p. 10.

③*Correspondence between the Federal and any of the Provincial Governments . . . concerning the disallowance of Provincial Acts, or the action on Provincial Bills Reserved. Can. Sessional Papers*, 1871, No. 9, Paper No. 89, p. 98.

④Terms of union, clause 14, *Can. Sessional Papers*, 1871, No. 4, Paper No. 18.

'And the Government of British Columbia agree to 'convey to the Dominion Government, in trust, to be 'appropriated in such manner as the Dominion Govern- 'ment may deem advisable in furtherance of the con- 'struction of the said Railway, a similar extent of Public 'Lands along the line of Railway throughout its entire 'length in British Columbia, not to exceed however 'Twenty (20) Miles on each side of said line, as may be 'appropriated for the same purpose by the Dominion 'Government from the Public Lands in the North-West 'Territories and the Province of Manitoba . . . In 'consideration of the land to be so conveyed in aid of 'the construction of the said Railway the Dominion 'Government agree to pay to British Columbia, from the 'date of the Union, the sum of $100,000 per annum, in 'half-yearly payments in advance.'①

It is worthy of notice that the railway grants are to be conveyed to the Dominion Government 'in trust' and that the sum of $100,000 per annum, payable in advance from the date of the Union, is made 'in consideration of the land to be so conveyed in aid of the construction of the said Railway,' despite the fact that the building of the transcontinental railway, stipulated in the same clause, was regarded then and long afterwards as one of the fundamental terms of union. It was ten years before the grant was made and fourteen years before the railway was completed. Throughout this period British Columbia received $100,000 per annum 'in consideration of the land to be so conveyed'; while Manitoba first extorted from the Dominion a grant 'in lieu of lands' only in 1882—twelve years after assuming the obligations of self-government as a Canadian province. The grant then made was $45,000 per year at a time when the Canadian Government had determined to appropriate for the construction of the Canadian Pacific Railway 100,000,000 acres of land in the West. Of this area, 25,000,000 had been already granted to the Railway Company, and it was intended to reimburse the Dominion for cash subsidies by the sale of the remaining 75,000,000 acres. In April of that year (1882)

①Address of Legislative Council of British Columbia, *Sessional Papers*, Canada, 1871, No. 4, Paper No. 18, p. 25.

Sir John A. Macdonald announced in the House of Commons that 'not a farthing of money will have to be paid by the people of Canada' for that great enterprise.

The provisions with regard to the public domain in British Columbia, therefore, are what one would expect from established British principles at the time. The public lands pass normally and automatically to provincial control. Those which are necessary 'for the purposes of the Dominion' are conveyed to, and administered by, the Dominion 'in trust.' The remuneration paid by the Dominion for the railway lands administered in this fiduciary capacity 'for the purposes of the Dominion' is a regular charge 'in half-yearly payments in advance.' It is computed 'in consideration of the land to be so conveyed' and as such it must be considered to indicate beyond question the beneficial interest of the province not only in the public domain normally within its own control but in that which is administered 'in trust' by the federal government 'for the purposes of the Dominion.' As such it must be regarded as the interest on the capital fiscal value to the province of the lands thus alienated 'in trust' to Canada 'for the purposes of the Dominion.' Within this category, it is submitted, must be considered the subsidy 'in lieu of lands' first granted to Manitoba in 1882 during the projection of the C.P.R. The annual payment to British Columbia was in lieu of the 'railway belt' alone, and as already pointed out was made regularly from the date of the Union for ten years before the land grants were actually made and for fourteen years before the railway was completed. It is contended that the lands alienated by the Dominion in Manitoba since 1870 have been disposed of by statutory enactment (33 Vic., c. 3, s. 30) 'for the purposes of the Dominion' and ought to be accounted for to this province upon a fiduciary basis similar to that stipulated with regard to the railway lands of British Columbia.

That province received $100,000 per annum 'in lieu of lands' conveyed to Canada 'in trust' for a railway which was stipulated by British Columbia as a condition of her union with the Canadian Confederation. Even the Indian lands,

in clause 13 of the articles of union, were to be 'conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians,' while it is suggested in some quarters that Manitoba must forfeit the beneficial interest in all lands hitherto alienated 'for the purposes of the Dominion'—must forfeit even the present inadequate annual subsidy 'in lieu of lands'—if the province is to be permitted to resume control of those which still remain. The case of British Columbia would seem to indicate beyond question that provincial status implies the same inherent rights over the public domain in the case of provinces subsequently added to the Dominion as are so specifically safeguarded by section 109 of the *B.N.A. Act* of 1867 for the original provinces of Confederation.

SUMMARY.

1. Vancouver Island was granted to the Hudson's Bay Company by Letters Patent of January 13, 1849, and was re-purchased by the Imperial Government on April 23, 1867, for £57,500.

2. The beneficial control of Vancouver Island, however, was not appropriated by the British Government as the public domain of Manitoba was appropriated (altogether without 'purchase' in that sense) by Canada 'for the purposes of the Dominion.'

3. There was no attempt to indemnify the British Government for the £57,500 by administering the land 'for the purposes of' Great Britain; while Canada 'by obtaining control of these lands' (Manitoba) sought

> 'to obtain repayment of the disbursement of the £300,000. '. . . The expense would be defrayed by that means 'instead of being charged against the people of the 'Provinces of Ontario, Quebec, Nova Scotia, and New 'Brunswick. That could be done, however, only by 'carrying out that policy of keeping the control of the 'lands of the country, and . . . they had determined 'to do so.' (*Sir John A. Macdonald*).

4. The mainland colony of 'British Columbia' was created (1858) from districts which had formerly been 'licensed'

areas of the Hudson's Bay Company, corresponding to the 'North-Western Territory' of the Prairie Provinces.

5. The two districts, therefore, which were united in 1866 under the name of British Columbia, resembled 'Rupert's Land' and the 'North-Western Territory' in having been 'granted' and 'licensed' territory respectively of the Hudson's Bay Company.

6. It was only in clause 14 of the terms of union that provision was first made for 'the introduction of responsible government when desired by the inhabitants of British Columbia.' Even the Address pursuant to *B.N.A. Act*, 1867, section 146, had to be passed by legislative council, which was then for the first time predominantly elective (nine out of fifteen members).

7. British Columbia thus acquired control of public domain and beneficial interest therein before having exercised responsible or even fully representative government. Manitoba assumed obligations of responsible government fifty years ago and has been denied ever since both functions with regard to the public domain.

8. Upon entering Confederation, B.C. assumed almost automatically the beneficial control of public domain. The issue was neither raised nor discussed nor specifically mentioned in the articles of union, and British principles thus prevailed with the first provisions for 'the introduction of responsible government.'

9. Even the 'railway belt' for the transcontinental railway stipulated by B.C. as the price of union, was transferred to Canada 'in trust' at an annual payment of $100,000. This subsidy, therefore, must be regarded as the interest on the capital fiscal value to the province of lands thus administered 'in trust' by Canada for the purposes of the Dominion.

10. Within this category, it is submitted, must be regarded the subsidy 'in lieu of lands' first granted to Manitoba in 1882 during the projection of the C.P.R. The lands alienated by Canada in Manitoba since 1870 have been administered by statute (33 Vic., c. 3, s. 30) 'for the purposes of the Dominion,' and ought to be accounted for like the railway lands of British Columbia upon a similar fiduciary basis.

VI.

BRITISH PRINCIPLES AND CANADIAN PRACTICE IN PRINCE EDWARD ISLAND.

In the case of Prince Edward Island, British principles with regard to the public domain are perhaps even more effectively though less directly illustrated, because the state of the 'land question' in that Island in 1873 was such that an almost automatic conformity, as in British Columbia, with established British practice was no longer possible. It became necessary to take measures of a very unusual character in order to idemnify the province for lands already alienated before the concession of 'responsible government,' and to endow the province with the domain still held by the large 'proprietors.'

Practically the whole public domain of Prince Edward Island had been alienated by the Crown—as Buller reported to Lord Durham, 'in one day'—to absentee proprietary holders nearly a century before Confederation and long before 'responsible government' with all its implications with regard to the public domain had been advocated or conceded.① With the advent of 'responsible government,' therefore, the 'land question' in Prince Edward Island became perhaps the most glaring example to be found in the self-governing British Colonies of the iniquities of the old system of control of the public domain from without in the beneficial interest of those who did not themselves constitute the community. In fact, the Colonial Office in the negotiations with the Hudson's Bay Company in March, 1864, referred, as already indicated, to the case of Prince Edward Island as a warning against divorcing any British community from the beneficial control of the land:

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①*Lord Durham's Report*, ed. Lucas, iii. 65.

Many of the proprietary grants had been ultimately made in 1768-9 under Lord William Campbell. See summary of titles in *Selkirk Papers*, Vol. 74, p. 19315, etc., Dominion Archives.

'In an unsettled colony there is no effectual mode of 'taxation for purposes of government and improvement, 'and the whole progress of the Colony depends on the 'liberal and prudent disposal of its land. These con- 'siderations afford decisive reasons against leaving that 'land in the possession of a corporation . . .

'In Prince Edward Island the right of property was 'more recently disjoined from that of Government, but 'the result has not been such as to invite imitation . . .

'It is clear that colonists of the Anglo-Saxon race look 'upon the land revenue as legitimately belonging to the 'community.'①

Of the total area of 1,390,720 acres, it was estimated in 1873 that 457,240½ acres had already been purchased by the local government, with the consent of various proprietary holders, in order to transfer the land to actual settlers, and that 381,720 acres still remained in the hands of 'proprietors,'② many of whom were the heirs of the original grantees from the Crown. The 'land question,' therefore, like the 'railway question' in British Columbia, naturally constituted the chief issue during the discussion of terms of union with Canada, and the decision mutually agreed upon would seem to indicate very clearly the principles which govern the case.

After protracted negotiations extending from 1869 to 1873 between the Legislature of Prince Edward Island and the Dominion Government, terms of union were agreed upon on March 7, 1873, at a conference between a Committee of the Canadian Privy Council③ and a delegation from Prince Edward Island consisting of the Hon. Messrs. Haythorne and Laird. These terms were adversely considered by the Island Assembly in the following April, but another conference,④

①*Correspondence relating to the Surrender of Rupert's Land*, 1869, Appendix iii., p. 68.

②*Can. Sessional Papers*, 1875, Vol. 8, Paper No. 61, pp. 10-12. The Canadian Privy Council referred to 'about one-third of the Island' as being 'owned by absentee proprietors.' *Can. Sessional Papers*, 1870, Vol. 5, Paper No. 31, p. 7.

③Comprising the Rt. Hon. Sir John A. Macdonald, and the Hon. Messrs. Tilley, Langevin, Howe and Tupper.

④Between the Rt. Hon. Sir John A. Macdonald and the Hon. Messrs. Tilley, Langevin and Tupper for Canada, and the Hon. Messrs. Pope, Haviland and Howlan from P.E.I.

on May 15 reached an agreement which was subsequently embodied (as stipulated in the *B.N.A. Act*, 1867, section 146) in Addresses of the Canadian House of Commons (May 20, 1873), the Canadian Senate (May 21), the Prince Edward Island Legislative Council (May 28), and Assembly (May 28, 1873). The statutory provisions for the Union were already in existence in the *B.N.A. Act*, 1867, section 146, and pursuant to those provisions the union was effected as from July 1, 1873, by an Imperial Order in Council of June 26, 1873. In view of the confusion which appears to have prevailed with regard to the public domain, it would seem to be advisable to trace the inception and development of these particular terms in order to distinguish clearly their true import.

The first proposals embodied in a Report of the Canadian Privy Council① made no provision for the 'purchase of lands now held by large proprietors' beyond undertaking that the Dominion should 'use their influence to secure such legislation as will enable the Government of the Island to purchase the land now held in large blocks, upon terms just and equitable to all parties concerned.' This problem of the 'land tenure' constitutes, it will be seen, one of the two distinct phases of the 'land question' as eventually settled in the terms of union.

The other was the 'loss of Territorial Revenue' through the alienation of the public domain by the Crown without regard for the beneficial interest of the province. The Dominion Privy Council made the following recommendations:

> 'They submit that much discontent has for many years 'existed amongst the inhabitants of the Island, arising 'from the fact that the lands of the colony had been 'granted by the Imperial Government, in large blocks, 'and chiefly to persons resident abroad, thus leaving the 'Government of the Island no lands, the proceeds of the 'sale of which could, as in the other British colonies, be

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①Approved December 14, 1869, *Can. Sessional Papers*, 1870, Vol. 5, Paper No. 31, p. 7.

'appropriated towards local improvements and the 'maintenance of Government . . .

'That up to the present time the Island Govern- 'ment have failed to secure a consideration in lieu of the 'lands thus granted by the Crown . . .

'That in the event of the Island becoming part of the 'Union, the Government of the Dominion will endeavour 'to secure for the Island, from the Imperial Government, 'fair compensation for the loss of Crown Lands. Should 'the Dominion Government fail in their efforts to secure 'such compensation, they will undertake to raise by loan, 'guaranteed by the Imperial Government, or upon their 'own securities, should such guarantees be refused, eight 'hundred thousand dollars ($800,000) and pay the same 'to the Island Government as a compensation for the 'loss of such Crown lands.'①

It is to be noted that the 'consideration' proposed was 'in lieu of the lands thus granted by the Crown' and that this payment, therefore, was to be made for lands already alienated in such a way that the Island had been deprived of beneficial interest therein.

These proposals of December 14, 1869, however, were declined by the Island Government because they were not deemed 'sufficiently liberal.'② A Committee of Council of Prince Edward Island (January 7, 1870), proceeded to deal with the two phases of 'the land question' already outlined:

'Inasmuch as said terms do not comprise a full and 'immediate settlement of the Land tenure③ and in- 'demnity from the Imperial Government for loss of 'Territorial Revenue,④ the Committee of Council cannot 'recommend said terms to the consideration of their 'constituents.'⑤

In a detailed statement subsequently issued, the Prince Edward Island Council elaborated these two demands for a

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①*Can. Sessional Papers*, 1870, Vol. 5, Paper No. 31, p. 7.

②Hodgson to Young, February 7, 1870, *Id.* p. 8.

③Viz., the expropriation of the proprietary holdings still unalienated to resident settlers.

④Cf. the 'consideration in lieu of the lands thus granted by the Crown.' Can. P.C., December 14, 1869.

⑤*Can. Sessional Papers*, 1870, Vol. 5, Paper No. 31, p. 9.

'settlement of the land tenure,' and for 'indemnity . . . for loss of Territorial Revenue,' and submitted that

> 'the offer of eight hundred thousand dollars as a free 'gift from the Dominion . . . would not establish 'this Colony in a position as regards land tenures and 'territorial revenues similar to that occupied by the 'adjoining Provinces . . .'
>
> 'The Dominion, from whom the Island has received 'no injury, and to whom no purchase-money or rents of 'land have been paid, is required to assume a duty which, 'clearly, is not hers.'①

The Conference of March 7, 1873, therefore, proceeded to draw up terms designed as far as possible to 'establish this Colony in a position as regards land tenures and territorial revenues similar to that occupied by the adjoining Provinces.' The terms thus adopted with regard to both these issues—viz., 'Land tenure' and 'territorial revenues'—were then stated practically in the form in which they received the acceptance of the subsequent conference of May 15, 1873, and eventually of both the Senate and Commons of Canada, and the Council and Assembly of Prince Edward Island. Clause 5 in the final terms of union reads as follows:

> '5. That as the Government of Prince Edward Island 'holds no lands from the Crown, and consequently enjoys 'no revenue from that source for the construction and 'maintenance of local works, the Dominion Government 'shall pay by half-yearly instalments, in advance, to the 'Government of Prince Edward Island, forty-five thous-'and dollars per annum, less interest at five per cent. per 'annum, upon any sum not exceeding eight hundred 'thousand dollars which the Dominion Government may 'advance to the Prince Edward Island Government for 'the purchase of lands now held by large proprietors.'②

It is thus seen that the Dominion, 'to whom no purchase-money or rents of land have been paid' from lands already alienated, agreed nevertheless to pay to the Island Govern-

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①*Can Sessional Papers*, 1870, Vol. 5, Paper No. 31, p. 9.

②*Statutes of Canada*, 2nd Parliament, 36th Vict., 1873, xi, xiv, xv, xxi.

ment the sum of $45,000 per year in default of 'revenue from that source ("lands from the Crown") for the construction and maintenance of local works.' This subsidy, therefore, represents a capital of $900,000 'in lieu of the lands thus granted by the Crown'; and this amount exceeds by $100,000 the sum originally offered by Canada and not regarded by the Island Council as 'sufficiently liberal' in 'compensation for the loss of such Crown Lands.' This may be said to have constituted 'the indemnity for loss of Territorial Revenue' as demanded by the Island Council on January 7, 1870.

With regard to the other demand, for a 'full and immediate settlement of the Land tenure,' the Dominion undertook as the terms of union indicate, to lend the Island Government sums of money as required, not to exceed $800,000, 'for the purchase of lands now held by large proprietors.' The sums thus borrowed at five per cent. were used in expropriating, under the provisions of the *Land Purchase Act* of 1875① and its amendments (39 Vic., c. 5; 39 Vic., c. 6; 39 Vic., c. 7; 41 Vic., c. 9) the holdings of the proprietors; and the public domain thus acquired was converted from leasehold tenures into freehold estates and disposed of by the Land Commissioner to resident settlers upon terms which produced for the province a sum in the aggregate considerably in excess of the amount advanced by the Dominion. The net proceeds of land sales during the twenty-one year period from 1879 to 1900 alone were considerably more than the entire principal—$800,000—to be borrowed from the Dominion by the terms of the union.② With

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①38 Vic., c. 32, *P.E.I. Statutes*, 38 Vic., 1875, p. 105. A previous *Land Purchase Bill* (37 Vic., c. 3) drawn up by the Island Legislature with provisions for compulsory sale of proprietary holdings, appointment of joint commissioners, etc., had been disallowed by the Dominion Government. *P.E.I. Statutes*, 37 Vic., 1874, p. 29. *Can. Sessional Papers*, 1875, Vol. 8, Paper No. 61.

②Cf. the accounts of the Commissioner of Public Lands appended to the Journals of the Assembly of P.E.I. published from and after the year 1881. The proceeds of these sales from 1875 to 1879—a period during which the returns would be expected to be at their maximum—are not as yet available on account of the fact that no journals appear to have been published before 1882.

regard to the 'settlement of the Land tenure,' therefore, as in the case of 'the indemnity for loss of Territorial Revenue,' the Province of Prince Edward Island emerged in a very strong position in view of the grievous disabilities under which that Colony had stood in respect of public lands.

The terms of union, therefore, comprise as the basis of provincial status in respect of public lands, two distinct transactions designed to 'establish this Colony in a position as regards land tenures and territorial revenues, similar to that occupied by the adjoining Provinces,' viz. (*a*) the fixed subsidy of $45,000 per year as 'indemnity for loss of Territorial Revenue,' 'in lieu of the lands thus granted by the Crown' without regard to the beneficial interest of the community therein and in default of 'revenue from that source for the construction and maintenance of local works'; and (*b*) the loan of $800,000 at 5 per cent. for the purchase of proprietary lands. The annual subsidy represents the interest on 'Territorial Revenue' to the capitalized fiscal value of $900,000, and this subsidy was paid—and is still paid—at a uniform rate and in semi-annual payments in advance. The sums loaned by the Dominion for the purchase of proprietary holdings were advanced as required, and the lands thus expropriated became automatically public domain of which the Island assumed full beneficial control. In process of sale to small holders this land became at once revenue-producing to an extent, as already pointed out, which more than counterbalanced, in the aggregate, the capital sums borrowed from the Dominion. The one transaction, therefore, recognizes the retroactive beneficial interest of the province in lands alienated for purposes other than those of the province; the other implies beneficial control over the public domain still available. Both provisions are seen to be in exact conformity with the constitutional principles already outlined as inherent in British self-government since the concession of 'responsible government.'

It is a remarkable fact that in the case of Manitoba the only obstacle to the recognition of precisely similar claims is

the Dominion Government itself. In the case of Prince Edward Island, it was conceded that the Dominion was assuming, gratuitously, obligations for which it was in no way responsible: 'the Dominion, from whom the Island has received no injury, and to whom no purchase-money or rents of land have been paid, is required to assume a duty which, clearly, is not hers.'① In the case of Manitoba, the responsibility for the conditions to which this province has been subjected for fifty years rests upon the Dominion Government. In the case of Prince Edward Island, the public domain in question had been hopelessly impaired by ancient and intractable proprietary grants during the period before 'responsible government,' and a century before provincial status was acquired. In the case of Manitoba, the public domain in question has been alienated 'by the Government of Canada for the purposes of the Dominion' for fifty years since provincial status otherwise had been accorded in the *Manitoba Act.* Like Prince Edward Island, Manitoba, it will be seen, eventually received a subsidy from the Dominion 'in lieu of lands.' In the one case it was granted from the very beginning of provincial status; in the other it was extorted for the first time only twelve years after the *Manitoba Act.* The subsidy to Manitoba began also at $45,000 per annum (specified in the Order in Council of March 7, 1882,② as 'the same sum that was allowed to Prince Edward Island in lieu of lands') at a time when the Canadian Government had determined, as already pointed out, to appropriate for the Canadian Pacific Railway alone an area of 100,000,000 acres of western lands, more than seventy times the area of the whole Province of Prince Edward Island.

With regard to the beneficial control of the public domain which still remains unalienated, the contrast is not less striking. The Dominion Government, which assumed obligations for which it was in no way responsible in providing for the purchase of the proprietary estates in Prince Edward

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①P.E.I. Council, *Can. Sessional Papers*, 1870, Vol. 5, Paper No. 31, p. 9
②*Can. Sessional Papers*, 1882, Vol. 10, Paper No. 82 (*a*).

Island, has not only taken no steps to put Manitoba in possession of her natural resources but has actually been playing the rôle of the proprietary grantees from the Crown in administering the public domain of the province (as provided in the *Manitoba Act*) 'for the purposes of the Dominion.'

SUMMARY

1. In Prince Edward Island, automatic conformity, as in British Columbia, with British practice was no longer possible because the public domain had already been granted to absentee proprietors nearly a century before Confederation and long before the period of 'responsible government.'

2. The Colonial Office, in fact, had urged the case of Prince Edward Island against the old system of control of the public domain in Rupert's Land in the beneficial interest of those (H.B. Co.) who did not themselves constitute the community:

> 'In an unsettled colony there is no effectual mode of 'taxation for purposes of government and improve-'ment . . .
>
> 'In Prince Edward Island . . . the result has not been such as to invite imitation . . .
>
> 'It is clear that colonists of the Anglo-Saxon race look 'upon the land revenue as legitimately belonging to the 'community.'

3. The 'land question,' therefore, like the 'railway question' in B.C., was the chief issue in discussing terms of union, and there were two distinct phases of the problem:

(*a*) the loss of Crown lands and consequent lack of normal land revenues of British provinces 'for purposes of government and improvement;'

(*b*) the survival of proprietary tenures.

4. The first proposals from the Canadian Privy Council (December 14, 1869) with regard to these two phases of the 'land question' suggested:

(*a*) a sum of $800,000 'as a compensation for the loss of such Crown Lands' ('in lieu of the lands thus granted 'by the Crown') 'the proceeds of the sale of which 'could, as in the other British colonies, be ap-'propriated towards local improvements and the 'maintenance of Government;'

(*b*) that the Dominion should 'use their influence to 'secure such legislation as will enable the Govern-'ment of the Island to purchase the land now held 'in large blocks.'

5. These terms were not regarded by the Island Government as 'sufficiently liberal' to 'establish this Colony in a position as regards land tenures and territorial revenues similar to that occupied by the adjoining Provinces.' Two demands, therefore, were formulated (*Committee of Council*, P.E.I., January 7, 1870):

(*a*) 'indemnity . . . for loss of Territorial Revenue;'

(*b*) 'a full and immediate settlement of the Land tenure.'

6. These requirements were conceded in the terms of union (March 7 and May 15, 1873) by the following provisions:

(*a*) indemnity of $45,000 per annum (still paid) since the Island Government had lost their Crown lands and 'consequently enjoys no revenue from that source for the construction and maintenance of local works;'

(*b*) a loan from the Dominion not to exceed $800,000 at 5 per cent. per annum 'for the purchase of lands now held by large proprietors.'

7. It is seen, therefore, that the Dominion, to whom the beneficial control of the alienated lands of the Island had not belonged, and to whom, therefore, 'no purchase-money or rents of land have been paid' (*P.E.I. Council*) agreed nevertheless to pay P.E.I. an annual subsidy 'in lieu of the lands thus granted by the Crown' and in default of 'revenue from that source for . . . local works.' This subsidy represents a capital sum of $900,000, $100,000 in excess of that originally offered by Canada (see 4 (*a*) above) and declined by P.E.I. as not 'sufficiently liberal.'

8. With regard to the other phase of the question, the 'settlement of the Land tenure,' the sums advanced by the Dominion enabled the Island to expropriate the proprietary holdings under the terms of the *Land Purchase Act* of 1875 and its amendments. These expropriated lands became automatically revenue-producing public domain, yielding during the twenty-one year period 1879-1900 alone (which

does not include the most productive years) more than the total capital sums advanced by the Dominion.

9. One transaction, therefore, implies the retroactive beneficial interest of the province in lands alienated from without for purposes other than those of the community; the other implies the right to the beneficial control of the public domain still available. Both provisions are seen to be in conformity with sound British principles already outlined as inherent in provincial status since the concession of 'responsible government.'

10. In Manitoba the only obstacle to precisely similar claims is the Dominion Government itself. In P.E.I. alienations had been made by the Crown for over a century, and long before the period of 'responsible government'; in Manitoba alienations have been made for fifty years after provincial status 'by the Government of Canada for the purposes of the Dominion.' Even the subsidy of Manitoba 'in lieu of lands' was conceded ('as is done in P.E.I.' viz., 'in lieu of lands thus granted by the Crown') only twelve years after provincial status (1882) and after the Dominion had determined to appropriate for railways alone in the West an acreage seventy times the whole area of P.E.I.

11. With regard to resources hitherto unalienated, the Dominion enabled P.E.I. to expropriate the lands of the proprietary holders. In Manitoba the Dominion Government is still playing the rôle of the proprietary grantees themselves in administering the public domain by statute, 'for the purposes of the Dominion.'

VII.

FEDERAL POLICY AND PROVINCIAL POVERTY IN MANITOBA AFTER 1870.

Between the principles already outlined for other self-governing provinces and Dominions of the Empire and the present claims of the Province of Manitoba lie fifty years of controversy. There are many phases of this 'fight for provincial rights' which are not pleasant to reflect upon. Nothing perhaps is to be gained by stirring these animosities at the present time. 'That this state of affairs should continue,' wrote Premier Norquay in March, 1883, 'is neither fair to the Province nor creditable to the Dominion.'① One thing, however, would seem to be self-evident. This particular issue is too fundamental—it has already played too profound a part in the political development of British peoples all over the world—to admit here of casual adjustment or evasion. There must be a return to first principles, and the longer the settlement is postponed the more searching it is likely to be.

With regard to the general character of that settlement, there would seem to be no manner of doubt. It must be that which is everywhere prevalent in the other provinces of the Dominion and of the British Empire. It must be based upon rights implicit and inherent in provincial status. The detailed application of the principles already outlined would involve a searching examination of the alienations of the natural resources of Manitoba since 1870 'by the Government of Canada for the purposes of the Dominion.' This is beyond the scope of the present inquiry, but the general claims of the province may be stated in very direct and simple terms. The terms are those which the present Premier of Canada enunciated for the Provinces of Saskatchewan and

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①Report of Committee of Executive Council, *Can. Sessional Papers*, 1883, Vol. 12, Paper No. 108, p. 9.

Alberta when the Acts conferring provincial status were under discussion at Ottawa, viz., 'exactly the same control over their lands as is enjoyed by the people of the other provinces.'

> 'The people of the Northwest when they are granted 'provincial rights are fully capable of dealing with these 'lands . . . They are entitled to the control of these 'lands just as much as the people of the eastern provinces 'of Canada are entitled to the control of their provincial 'domain. I see no distinction.'①

The Province of Manitoba seeks merely the recognition of full provincial status as from 1870 'when they are granted provincial rights'; and it is submitted that full provincial status as from 1870 involves (*a*) ample recognition of the beneficial interest of the province in the public domain already alienated 'by the Government of Canada for the purposes of the Dominion,' and (*b*) the unrestricted beneficial control of all resources hitherto unalienated.

While nothing perhaps is to be gained by stirring again the animosities of a generation ago, it is doubtful if anything is to be gained by concealing how far the early policy of the Dominion in some respects fell below standards of sound statesmanship. It is not contended that a large measure of federal 'control' over the public domain in 1870 was not justifiable by many considerations of national policy. It is contended, however, that it was less than just, and in the long run less than wise, to seek to achieve these great 'purposes of the Dominion' at the expense of the constitutional rights of Manitoba. It cannot be gainsaid that in order to reconcile a reluctant public opinion in the rest of Canada to these great national enterprises, the Federal Government construed the administration of the public lands into a species of 'ownership' which was regarded as a warrant to alienate them without accountability to the inhabitants of this province.

There can be no doubt that this attitude was long adopted by the Federal Government and is still echoed in the Eastern

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① *Hansard*, 1905, pp. 1462, 2929.

Provinces in the most uncompromising form. Sir John A. Macdonald in discussing the *Manitoba Bill* pointed out that

> 'it was worthy of attention how carefully the interest of 'the Dominion had been looked to in the reservation of 'all lands for all purposes . . . They (the in- 'habitants) wished Rupert's Land made into one Province 'and to have all the land within the boundary as in other 'Provinces. . . . The land could not be handed over 'to them, it was of the greatest importance to the 'Dominion to have possession of it, for the Pacific 'Railway must be built by means of the land through 'which it had to pass . . . They would be in a 'position to obtain repayment of the disbursement of 'the £300,000 . . . The expense would be defrayed 'by that means instead of being charged against the 'people of the Provinces of Ontario, Quebec, Nova 'Scotia, and New Brunswick.'①

Sir George Cartier expressed the federal policy still more bluntly when he stated that the public domain in the West 'had been given up for nothing.'② In a Report of the Privy Council for Canada, approved March 7, 1882, it is contended similarly that 'the whole of Manitoba was acquired by the Dominion by purchase from the Hudson's Bay Company and thus became the property of the Dominion.'③ In another Report of the Privy Council of Canada, approved May 30, 1884, it is stated quite unequivocally that the land grants to the C.P.R. were the normal means of meeting the cost of that great enterprise:

> 'The expenditure in construction and in cash subsidies 'may be regarded as an advance to be repaid from the 'lands.'④

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①'That could be done, however, only by carrying out that policy of keeping the control of the lands of the country, and . . . they had determined to do so.' *Recent Disturbances in the Red River Settlement*, 1870, pp. 132, 143, 146, etc.

②'It must be in the contemplation of the Members of the House that these could be used for the construction of the British Pacific Railway from the East to the West.' *Id.* p. 139.

③*Can. Sessional Papers*, 1882, Vol. 10, Paper No. 82a.

④*Can. Sessional Papers*, 1885, Vol. 12, Paper No. 61.

When the futility of the original plan of building the C.P.R. 'from the lands' became obvious, the avowed policy of the Dominion underwent a considerable modification. Even then, however, one looks in vain for any explicit disavowal from official quarters at Ottawa of the earlier attitude of the Dominion; and long after the 'resources question' had entered its second phase with the growing political importance of the West, one looks in vain for any clear-cut concession of the simple British principles which lie at the root of the whole matter. As late as 1905 it was contended at the introduction of the *Alberta* and *Saskatchewan Bills* in the House of Commons that 'these lands were bought by the Dominion Government and they have remained ever since the property of the Dominion Government.'① A repetition of the phrases of fifty years ago is to be sought not in vain among the resolutions of provincial legislatures during the last twelve months. The Province of Manitoba, like the nation as a whole, has moved far during the past six years; and it is submitted that the use of these outworn and unfortunate phrases is no longer free from an element of danger to the best interests of the Dominion.

This attitude of 'purchase,' of 'ownership,' of 'property' 'bought' and 'possessed,' has been reflected even in the statutory provisions which have been held to validate the administration of the public domain in the West as 'Dominion Lands.' It is well known that for many years the very statutory basis of that administration has not gone unquestioned. The *Manitoba Act* was a federal statute, to come into force 'On, from and after the day upon which the Queen . . . under the authority of the 146th Section of the British North America Act, 1867, shall by Order in Council in that behalf, admit Rupert's Land and the North-Western Territories into the Union or Dominion of Canada.'② This Act, it was subsequently found, was largely *ultra vires*

①Sir Wilfrid Laurier, *Hansard*, 1905, p. 1431.

②33 Vic., c. 3, s. 1. It is to be noticed that both Rupert's Land and the North-Western Territory are here regarded as admitted to the Dominion pursuant to the *B.N.A. Act*, 1867, s. 146.

of the Federal Government—'of more than doubtful validity,' as Keith points out①—and though the chief points in doubt were 'those of its provisions which gave the right to the Province to have Representatives in the Senate and House of Commons of the Dominion,'② the provisions in section 30 with regard to the 'ungranted or waste lands' have been impugned both then and since.③ It became necessary in fact to apply to the Colonial Office for an Imperial Act 'confirming the Act of the Canadian Parliament, 33 Vic., Cap. 3 . . . as if it has been an Imperial statute, and legalizing whatever may have been done under it according to its true intent.'④

The British North America Act, 1871, was passed accordingly, providing (section 5) that the *Act for the Temporary Government of Rupert's Land and the North-Western Territory* and the *Manitoba Act* 'shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's

①*Responsible Government in the Dominions*, ii, 648.

②Memorandum of Sir John A. Macdonald, *Can. Sessional Papers*, 1871 Vol. 5, Paper No. 20.

③Cf. note p. 79, and also the Hon. Mr. Monk in *Hansard*, 1905, pp. 3072 *et seq.*: The *Manitoba Act* was '*ultra vires*—was so considered by the legal advisers of the Crown in England—and in order to make it valid it was necessary to pass the Imperial Act of 1871.'

Mr. Lemieux: 'To remove doubts.'

Mr. Monk: 'That is the preamble that my honorable friend is citing. 'But, if he will go to the sources, he will find that there was a very strong opinion in England and also here—I believe it was shared by Mr. Blake—'that we had no right. It validated the section to which my honorable 'friend from Ottawa (Mr. Belcourt) has referred' . . . (Mr. Belcourt had asked, p. 3072, 'Are we to assume then that the Manitoba Act . . . 'which declared the ungranted lands of that province to remain subject to 'the control of the Dominion Government, was *ultra vires?*')

'The interpretation given by the Judical Committee of the Privy 'Council upon section 109 . . . has always been favourable to the 'provinces, and has gone very far in the direction of maintaining that all 'public lands . . . once the province is created fell under provincial 'control' . . .

'By common understanding of section 109 and the interpretation put 'upon that section since our constitutional questions have arisen, it would 'seem to be evident that public lands, by the very terms of the constitution, 'belonged to the provinces the moment they entered confederation, and I 'see no reason for departing from that rule in regard to the province created 'out of a portion of the Northwest Territories.'

④Lisgar to Kimberley, January 3, 1871, and Mem. of Sir John A. Macdonald, *Can. Sessional Papers*, 1871, Vol. 5, Paper No. 20.

name, of the Governor-General of the said Dominion of Canada.'① And thus the administration of 'All ungranted or waste lands in the Province . . . by the Government of Canada for the purposes of the Dominion,' devised without the consent or even the knowledge of the inhabitants of this province, is blindly validated by an Imperial Act drafted in Ottawa 'for all purposes whatsoever.'② It is submitted that the two phrases 'for the purposes of the Dominion' and 'for all purposes whatsoever,' while worthy of each other, are scarcely worthy of the fiduciary obligations which Canada, both before and after Confederation, volunteered to undertake for Rupert's Land and its inhabitants as 'part of the British Colonial System' and 'in conformity with the equitable principles which have uniformly governed the British Crown.' It is a very remarkable fact that section 30 of the *Manitoba Act*, incorporated into that measure in defiance of the wishes of the inhabitants of the community and validated by a perfunctory *carte blanche* 'for all purposes whatsoever' in the *B.N.A. Act* of 1871, should be the statutory basis upon which over 18,000,000 acres of the Province of Manitoba have been alienated forever from provincial control 'by the Government of Canada (as provided by statute) for the purposes of the Dominion.'③

①Viz., for the *Manitoba Act* on May 12, 1870, more than one month before the surrender of the Hudson's Bay rights in Rupert's Land had been accepted by the Crown and over two months before the 'transfer' to Canada came into operation.

②For draft see *Can. Sessional Papers*, 1871, Vol. 5, Paper No. 20. It is interesting to note that the proposed provision (section 6) that 'any Act of the said Parliament hereafter establishing a Province as aforesaid shall have effect as if it has been enacted by the Parliament of the United Kingdom of Great Britain and Ireland' *does not appear in the final Act*, and the omission would seem to be very significant. See note immediately following.

③There would seem to be in the view of the *B.N.A. Act*, 1867, emphasized by the Judical Committee of the Privy Council in the *Manitoba Initiative and Referendum Case* (6 Geo. v, c. 59) the basis for a much more searching inquiry into the legal status of the public domain in Canada and particularly that part of it known as 'Dominion Lands.' Lord Haldane's finding is in part as follows:

> 'The scheme of the Act passed in 1867 was thus, not to weld the 'Provinces into one, nor to subordinate Provincial Governments to a 'central authority, but to establish a Central Government in which 'these Provinces should be represented, entrusted with exclusive 'authority only in affairs in which they had a common interest. Subject

The years which followed the *B.N.A. Act* of 1871 are perhaps the most humiliating in the history of Manitoba. The province struggled courageously under financial responsibilities which, despite an economy verging upon abject parsimony, were utterly beyond the powers of the Provincial Treasurer to meet from the resources at his disposal. The 'civil list' (such as it was) under responsible government was undertaken, but there were no 'full rights over the lands in exchange.' There was 'no effectual mode of taxation for purposes of government and improvement'; and though, as the Colonial Office (1864) pointed out, 'the whole progress' of such a community 'depends on the liberal and prudent disposal of its land,' the Dominion Government had appropriated 'for the purposes of the Dominion' not only what-

'to this each Province was to retain its independence and autonomy, 'and to be directly under the Crown as its head. Within these limits '. . . its local Legislature, so long as the Imperial Parliament did 'not repeal its own Act conferring this status, was to be supreme.' *Law Journal Reports*, Nov., 1919, p. 145.

Now the statutory basis for the transfer of 'Rupert's Land' and the 'North-Western Territory,' as already pointed out, was (*a*) the *B.N.A. Act*, 1867, section 146, and the *Rupert's Land Act*, section 5, in the case of Rupert's Land, and (*b*) the *B.N.A. Act*, 1867, section 146, alone, for the North-Western Territory. (Cf. Sir John A. Macdonald's Memorandum to the Can. P.C., Dec. 29, 1870, *Sess. Papers*, 1871, Vol. 5, Paper No. 20: 'The Rupert's Land Act provides . . . for the admission of Rupert's Land (but not of the North-Western Territory) into the Dominion of Canada.')

(*a*) By the *B.N.A. Act*, 1867, section 146, the statutory authority to the Queen 'to admit Rupert's Land and the North-Western Territory, or either of them, into the Union' is definitely specified as being 'subject to the provisions of this Act,' viz., with full beneficial control of the public domain vested exclusively not in the Dominion but in provinces enjoying 'supreme' powers in that regard, 'directly under the Crown.' As Sir John A. Macdonald conceded in the memorandum above referred to:

'Even if the terms of the Address (specified in the *B.N.A. Act*, 1867, 'section 146) had included a new constitution for the North-West it 'must, under the above cited section, have been subject to the pro-'visions of the Imperial Act of Union.'

(*b*) By the *Rupert's Land Act* the only statutory rights and powers transferred to 'the Parliament of Canada' were specified as follows:

'to make, ordain, and establish within the Land and Territory so 'admitted as aforesaid, all such Laws, Institutions, and Ordinances, 'and to constitute such Courts and Officers as may be neeessary for the 'Peace, Order and good Government of Her Majesty's Subjects and 'others therein.'

Whatever may be thought therefore of the powers of fiduciary 'control' over the public domain authorized by this section, there would seem to be

ever 'land revenue' there was but the whole source of potential revenues which ought to have been looked upon as 'legitimately belonging to the community.' Like Prince Edward Island at Confederation, the Province of Manitoba was left 'holding no lands from the Crown, and consequently enjoying no revenue from that source for the construction and maintenance of local works'; unlike Prince Edward Island, Manitoba was left for twelve years with no compensation whatever 'in lieu of lands.'

Immigration directed by the Federal Government was proceeding with unprecedented rapidity; the settler who received his homestead for nothing from the public domain in Manitoba made the highest per capita contribution to

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nothing in it warranting the appropriation of the 'beneficial interest' in the public domain by the Federal Government.

The 'more than doubtful validity' of the *Manitoba Act*, therefore, has been held in the opinion of many eminent jurists to apply to this phase, at least, of section 30 of that Act providing that:

> 'All ungranted or waste lands in the Province shall be . . . vested 'in the Crown and administered by the Government of Canada for the 'purposes of the Dominion,'

until, at least, the Canadian *Manitoba Act*, as already outlined, was regarded as validated 'for all purposes whatsoever' by the *B. N.A. Act* of 1871.

There would seem to be other consequences, however. It will be remembered that by Imperial Act in 1852 (15 & 16 Vic., c. 39), 'An Act to remove Doubts as to the Lands and Casual Revenues of the Crown in the Colonies and Foreign Possessions of Her Majesty,' the British Parliament had expressly renounced all beneficial interest 'arising from the sale or other disposition of the lands of the Crown in any of Her Majesty's colonies or foreign possessions,' and that this beneficial interest had passed everywhere to self-governing provinces under 'responsible government.'

Now the surrender of chartered rights of the Company in Rupert's Land had been accepted by the Crown by Order in Council on June 22, 1870, and such of these rights as are specified in the *Rupert's Land Act* were vested in the Parliament of Canada by Order in Council as from July 15. Those rights have universally been held to validate at least the provisions of the *Manitoba Act* in creating the machinery of responsible government in Manitoba. If, therefore, the provisons with regard to the 'ungranted or waste lands' of the province were *ultra vires* of Canada in 1870 and void until validated by the *B. N.A. Act* of 1871, it would follow that this province from July 15, 1870, until the *B. N.A. Act* of 1871, actually had every constitutional and legal British right to the beneficial interest of the public domain, and that by a series of usurpations culminating in the *carte blanche* of the *B. N.A. Act* of 1871 those rights have been appropriated by the Dominion for fifty years.

It would seem to follow from Lord Haldane's judgment also that an Imperial Act restoring the public domain to Manitoba may be initiated if anything more appropriately by the Provincial Legislature than by the Parliament of Canada.

Canadian customs revenues in the Dominion.① The Provincial Government whose right over the natural resources, as Sir George Cartier remarked, 'had been given up for nothing,' was expected to provide 'local works' and improvements from revenues 'not enough to pay the expenses of running a respectable sea-side hotel.'② The upper chamber, provided in section 10 of the *Manitoba Act*, was abolished because the province could not afford the sessional indemnity: the Dominion agreed to an additional grant of $26,746.96 in order to raise the total provincial subsidy to $90,000 ('with economies') on condition that the government be 'simplified and cheapened by the abolition of the second Chamber.'③ The provincial government sought to shift much of the burden of development to incipient municipalities, and contemplated 'a resort to direct taxation for the support of our provincial institutions.'④ During the 'boom' of the early eighties especially, it was realized that a 'great influx of population' would only 'multiply the expenses of government':

> 'A large addition to the population of the Province 'would be nothing short of an evil in disguise; the rapid 'settlement of the territory would prove anything but a 'blessing; to meet increasing requirements, under present 'circumstances, would be an impossibility, our revenue 'being out of all proportion to our necessary expenditure.'⑤

The natural resources were thus administered by the Dominion in such a way as to increase the obligations of the province and at the same time to deprive it of all sources of

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①An average of $10.76 per capita during the ten-year period 1874-1883, as compared with amounts ranging for $3.14 in Ontario, $5.16 in Quebec, $4.21 in New Brunswick, $3.49 in Nova Scotia, $2.41 in P.E.I. and $10.27 in B.C.; 'Each Manitoban contributing twice as much as a Quebecer, 2½ times as much as a New Brunswicker, three times as much as a Nova Scotian, 3¼ times as much as an Ontarian, and 4¼ times as much as a Prince Edward Islander.' *Memoranda by Provincial Treasurer of Manitoba*, 1884.

②Premier Davis.

③*Can. Sessional Papers*, 1876, Vol. 8, Paper No. 36.

④*Can. Sessional Papers*, 1883, Vol. 12, Paper No. 108.

⑤*Can. Sessional Papers*, 1883, Vol. 12, Paper No. 108.

territorial revenues. The province was being impoverished in a fiscal sense by means of the public domain within its own boundaries. 'The purposes of the Dominion' with regard particularly to a transcontinental railway, were to be effected very largely at the expense of the province: 'the Pacific Railway must be built by means of the land through which it had to pass.' In Prince Edward Island the Dominion had offered to provide 'fair compensation' for the loss of 'lands, the proceeds of the sale of which could, as in the other British Colonies, be appropriated towards local improvements and the maintenance of Government.'① In Manitoba, lavish land grants and a generous immigration policy produced excellent results 'for the purposes of the Dominion': for ten years, as already pointed out, Manitoba supplied the highest per capita contribution to the federal customs revenues. The whole federal policy with regard to the land, however, was not in the interests of the Provincial Government. It depleted the provincial treasury and subjected the province to intolerable obligations.

It was under these circumstances that the Provincial Government succeeded at last in obtaining from the Dominion a subsidy of $45,000 per year 'in lieu of lands' at a time when Ontario was deriving $1,095,000 per annum from crown lands and when the Federal Government had 'solemnly set aside one hundred million acres' of Western lands for the construction of the C.P.R.② The significance of this 'subsidy in lieu of lands' may be discussed more appropriately perhaps in the next chapter. It remains to notice here, however, that the bounty of the Dominion was not such as to put an end to the pilgrimages to Ottawa which had 'taken place annually since the year 1872.'③ Pending the consideration of the claim of the province for a subsidy of $100,000 in lieu of lands, the Dominion agreed to a loan of $50,000 at 5 per

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①*Can. Sessional Papers*, 1870, Vol. 5, Paper No. 31, p. 7.

②Report of Committee of Can. P.C., *Can. Sessional Papers*, 1885, Vol. 12, Paper No. 61.

③Mem. of Delegates of the Exec. Counc. of Man., *Can Sessional Papers*, 1882, Vol. 10, Paper No. 82a.

cent. to be charged to the debt account in order 'to meet the immediate necessities of the Province.'① The grant eventually made was $45,000 per year which the Canadian Privy Council were 'willing to allow to Manitoba' in 1882 'as is done in P.E.I.'② This subsidy was announced by the Minister of Finance as 'intended to close any negotiations on that subject for the next ten years,' though, as Premier Norquay pointed out, 'the term of ten years was not mentioned, either in the verbal or written negotiations on the subject.'③

When the subsidy 'in lieu of lands' was increased in 1885 to $100,000, equal to that of British Columbia for the 'railway belt,' it was made contingent upon the condition 'if such proposed modified agreement is not accepted by the Legislature of the Province of Manitoba at its next session, as a full settlement of all questions discussed, it shall become null and void.'④ Necessity knows no law, and even the 'disallowance of railway charters,' the 'monopoly clause' of the C.P.R. charter, and the other issues which embittered relationships between the province and the Dominion at that time have left no mark upon the political traditions of the province comparable to the humiliation of the 'finality clause' of 1885. The fact that the enforced element of 'finality' proved to be as futile as it was humiliating in no wise mitigates an incident which no citizen of Manitoba even at this date can reflect upon with equanimity. In January, 1881, Premier Norquay and the Hon. Mr. Girard waited patiently at Ottawa for twelve days before being able to state their mission, and over a month before securing even the advance of $50,000 at 5 per cent. on the debt account 'to meet the immediate necessities of the Province.' A cartoon in *Grip* represented Manitoba as Oliver Twist asking for more. The bare record of the

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①*Journals of the Leg. Assembly*, Manitoba, 1881, cxxv.

②*Can Sessional Papers*, 1882, Vol. 10, Paper No. 82a.

③Report of Committee of Exec. Council, Mar. 8, 1883, *Can. Sessional Papers*, 1883, Vol. 12, Paper No. 108.

④Pope to Norquay and Murray, Jan. 10, 1885, in Report of Can. P.C. approved Jan. 23, 1885. *Can. Sessional Papers*, 1885, Vol. 12, Paper No. 61.

experiences of Premier Norquay and the Speaker of the Legislature during their mission at Ottawa from December 20, 1884, to January 10, 1885, when the 'finality clause' was at last announced to them,① is a simple but significant commentary upon the impotence of the province and its subordination to the Federal Government.

SUMMARY

1. The years of controversy for 'provincial rights' after 1870 were 'neither fair to the Province nor creditable to the Dominion' (*Premier Norquay*). The necessity of returning to first principles would seem to be self-evident. The issue is too fundamental—it has already played too profound a part in the political development of British peoples all over the world—to admit here of casual adjustment or evasion.

2. The only feasible settlement is that which is everywhere prevalent in other provinces and Dominions of the Empire, viz., 'exactly the same control over their lands as is enjoyed by the people of the other provinces . . . When they are granted provincial rights . . . they are entitled to the control of these lands just as much as the people of the eastern provinces . . . I see no distinction.' (*Premier Borden* in 1905).

3. Manitoba is thus entitled to recognition of full provincial status as from 1870, when it was 'granted provincial rights'; and this involves (*a*) unrestricted beneficial control of all resources hitherto unalienated, and (*b*) ample recognition of beneficial interest in the public domain alienated 'by the Government of Canada for the purposes of the Dominion.'

4. A large measure of federal 'control' was justifiable in 1870, in order to build C.P.R., encourage immigration, effect union with B.C., etc.; but it was less than just to achieve these great 'purposes of the Dominion' at the expense of the constitutional rights of Manitoba.

5. It cannot be gainsaid moreover that in order to reconcile a reluctant public opinion in the rest of Canada to these great national enterprises, the Federal Government construed the administration of the public lands into a species of 'ownership' implying a warrant to alienate them

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①Report of the Delegates of the Manitoba Legislature, *Journals of the Leg. Assembly*, Manitoba, 1885, Vol. xvi, Appendix A.

without accountability to the province: 'The land could not be handed over to them . . . The Pacific Railway must be built by means of the lands through which it had to pass . . . They would be in a position to obtain repayment of the disbursement of the £300,000.' (*Sir John A. Macdonald*). The public domain in the West 'had been given up for nothing.' (*Sir George Cartier*). 'The whole of Manitoba was acquired by the Dominion by purchase . . . and thus became the property of the Dominion.' (*Can. Privy Council*). 'The expenditure in construction (of the C.P.R.) and in cash subsidies may be regarded as an advance to be repaid from the lands.' (*Can. Privy Council*).

6. The attitude of 'purchase,' of 'ownership,' of 'property' 'bought' and 'possessed' was reflected even in the statutory basis of the administration of the 'Dominion Lands.' The *Manitoba Act* was largely *ultra vires* of Federal Parliament—'of more than doubtful validity.' (*Keith*). Even provisions with regard to 'ungranted or waste lands' were impugned both then and since until held to be validated by *B.N.A. Act*, 1871.

7. This statute confirms *Manitoba Act* 'for all purposes whatsoever.' The two phrases, therefore, 'for the purposes of the Dominion' and 'for all purposes whatsoever,' are scarcely worthy of the fiduciary obligations of the Dominion towards Manitoba as 'a part of the British . . . System.' The one phrase was devised without the consent or even knowledge of the community directly concerned and in contravention of every recorded expression of their wishes upon the subject; the other was drafted at Ottawa as a perfunctory *carte blanche* for the Federal Government. They form the statutory basis upon which over 18,000,000 acres of Manitoba have been alienated forever from provincial control.

8. The period after 1870 in Manitoba is not pleasant to reflect upon. The province was impoverished in a fiscal sense by means of the public domain within its own boundaries. In order to build the C.P.R. and encourage immigration the Dominion deprived the province of all sources of 'territorial revenues' at the same time as it added intolerably to the obligations of the province for 'local works.' Meanwhile Manitoba made the highest per capita contribution in Canada to federal customs revenues ($10.76 per annum for 1874-1883 as compared to $2.41 in P.E.I.) From a fiscal standpoint 'a large addition to the population' was 'nothing short of an evil in disguise.' The province was forced into

abject parsimony. The grant of $26,746 was made on condition that government be 'simplified and cheapened by the abolition of the second Chamber.'

9. Subsidy of $100,000 per annum 'in lieu of lands' was demanded in 1881 'in consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway'; pending a decision the Dominion advanced $50,000 at 5 per cent. on debt account to meet 'the immediate necessities of the Province.'

10. Subsidy of $45,000 was granted in 1882 'as is done in P.E.I.' and 'intended to close any negotiations on that subject for the next ten years.'

11. Increased subsidy of $100,000 in 1885 was made contingent upon 'finality clause' which has left a sense of humiliation deeper even than 'disallowance' and 'the monopoly clause' of the C.P.R. upon the political traditions of the province.

VIII.

AMERICAN PRECEDENTS FOR A BRITISH PROVINCE.

The grant of $45,000 as a 'subsidy in lieu of lands' in 1882—increased to $100,000 in 1885—has been interpreted as conceding, in some degree in practice at least, the beneficial interest of the province in the public domain within its boundaries.① It may be advisable, therefore, to examine the conditions under which these subsidies were first granted. It will be found that though they were extorted from the Dominion by the cogency of the cases of Prince Edward Island and British Columbia, the Federal Government was uncompromising with regard to the fundamental issue of provincial rights in the public domain, and unconcerned to the point of self-contradiction even with regard to the principles underlying the subsidy 'in lieu of lands.'

The rapid development of Manitoba from 1879 to 1882, as already indicated, depleted a provincial treasury which had already been deprived by the Dominion of all territorial revenues. The free homestead system—devised 'for the purposes of the Dominion'② and contributing through the increased customs duties the maximum returns to Dominion revenues—imposed obligations upon the local government against which the province struggled in vain. Two considerations, therefore, were undoubtedly jointly responsible

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①Cf. Sir Wilfrid Laurier to Premier Sifton, August 7, 1911: 'The guiding principle in each case, except Manitoba, seems to have been that the provinces were entitled to the public lands as a source of revenue to administer to the growing wants of the population in each province. Nor can it be said that this principle was absolutely departed from in the case of Manitoba since, whilst the public lands were retained by the Dominion, a larger yearly allowance out of the public treasury was granted to that Province . . . and this larger grant was several times increased afterwards.'

②For the historic defence of the free homestead system see *Can. Sessional Papers*, 1885, Vol. 12, Paper No. 61, Report of Committee of Can. P.C., approved May 30, 1884.

for the long agitation for 'provincial rights over the land,' viz., the intolerable financial burdens for 'local works' on account of the free homestead and immigration policy, and the practice of lavish land grants in the interests of a transcontinental railway for which 100,000,000 acres of Western lands had been 'solemnly set aside.' The memorandum of February 12, 1881, after pointing out the 'total inadequacy of the available revenue, there being left to the Province no source of local revenue, such as was enjoyed by the other Provinces of the Dominion,' advanced definite claims as follows:

> 'That in consideration of the lands within Manitoba appropriated by the Dominion for the building of the 'Canadian Pacific Railway, Canada shall pay to the 'Province by half-yearly payments, in advance, the sum 'of $100,000.① As soon as the lands required for the 'Canadian Pacific shall be set apart, the residue of ungranted land shall be handed over to the Province for 'the purpose of local revenue.'②

At the conference which followed the case of Prince Edward Island, which had a subsidy of $45,000 'in lieu of lands,' was substituted by the Minister of Finance for the $100,000 suggested by the case of British Columbia. The decision, however, was postponed until the following year, the Dominion advancing, as already observed, a sum of $50,000 at 5 per cent. on the debt account 'to meet the immediate necessities of the Province.'

On March 7, 1882, a Report of the Canadian Privy Council was approved by the Governor-General recommending for the first time the subsidy of $45,000 per annum 'in lieu of lands':

> 'They are . . . willing to allow to Manitoba the 'same sum that was allowed to P.E.I. in lieu of lands, 'namely $45,000.'

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①Based upon the subsidy of the same amount to British Columbia for the 'railway belt' transferred 'in trust' to the Dominion. See clause 11 in the terms of union, *Can. Sessional Papers*, 1871, Vol. 4, Paper No. 18, p. 25.

②*Journals of the Leg. Assembly*, Manitoba, 1881, Appendix, p. cxx.

The refusal to concede 'any change in respect to the Dominion Lands lying in Manitoba' was very emphatic.

> 'Considering, however, the peculiar position of the 'Province, the Committee of Council have indicated in 'the previous paragraph their willingness to allow 'Manitoba at the rate of $45,000 a year, as is done in 'P.E.I., in lieu of lands.'

There was undoubtedly more of expediency than of principle in the attitude of the Federal Government at this time①, but it will be noticed that the subsidy of $100,000 had been demanded by the province 'in consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway,' viz., for lands already alienated or immediately to be alienated by Canada 'for the purposes of the Dominion.' The grant eventually made was $45,000 'as is done in P.E.I.'; and it will be remembered that here also the original proposal of December 14, 1869, 'in lieu of lands' was offered as 'a consideration in lieu of lands thus granted by the Crown,' and 'as a compensation for the loss of such Crown lands';② and the final subsidy of $45,000 in the terms of union was specified as in default of 'revenues from that source for the construction and main-

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①For an instance of the confusion, not to say heedlessness, that seems to have prevailed with regard to the principles involved, and even with regard to the facts of the case, see Secretary of State (Hon. Mr. Chapleau) to the Lieut.-Gov. of Manitoba, April 2, 1884: 'As regards the Province of P.E.I., which had no public lands, a grant of $800,000 was made to it in lieu of the advantage which it would have had if it had owned any public lands. The steps thus taken in the case of P.E.I. was repeated in dealing in 1882 with Manitoba, and a sum of $900,000 or $45,000 a year granted to the Province in lieu of public lands.' *Journals of the Leg. Assembly*, Manitoba, 1884, Vol. xv, p. 310.

There would seem to be complete confusion here between the $800,000 originally offered by Canada as 'a consideration in lieu of the lands thus granted by the Crown', the $800,000 finally loaned by Canada 'for the purchase of lands now held by large proprietors', and the $45,000 (equivalent to a capital sum of $900,000) finally granted as 'indemnity . . . for loss of Territorial Revenue.' The truth may well have been that what with the C.P.R., the requirements of rapid immigration, etc., the Dominion was not in a position to consider the constitutional issue on its merits.

②A sum of $800,000, the equivalent of $40,000 per year, *Can. Sessional Papers*, 1870, Vol. 5, Paper No. 31, p. 7.

tenance of local works.'① It may be contended, therefore, that both the claim to a subsidy of $100,000 per annum 'in consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway,' and the grant substituted for it in 1882 by the Dominion 'as is done in P.E.I.' are based not upon future control of 'ungranted or waste lands in the Province' but upon lands already alienated without regard to the beneficial interest of the community. It may be observed here that the proposal of the Premiers of the three Prairie Provinces (Hon. Messrs. Scott, Roblin and Sifton) to Premier Borden, December 22, 1913, was based upon the same principle 'that the financial terms already arranged between the Provinces and the Dominion as compensation for lands should stand as compensation for lands already alienated for the general benefit of Canada.'② It will be necessary to refer again to this proposal, but it would be stating the case moderately from the standpoint of this province to say that however arbitrary may have been the basis of the present subsidy as fixed in 1905 and 1912, such compensation is found to be far from adequate for the alienations of half a century from the public domain of Manitoba 'by the Government of Canada for the purposes of the Dominion.'

The grant of $45,000 had scarcely been made before Premier Norquay in a very able memorandum to the Executive Council (March 8, 1883) was forced by the intolerable 'financial embarrassments' of the province to undertake 'a repetition of the unpleasant task of drawing . . . attention to the anomalous position which Manitoba now occupies as one of the Provinces of the Dominion':

> 'The prospect . . . precludes the possibility of her 'attaining that independent position as a Province which

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①Representing interest at 5 per cent upon a capital sum of $900,000 as 'territorial revenues' lost by royal grants.

②'And that all lands remaining within the boundaries of the respective Provinces, with all natural resources included, be transferred to the said Provinces, the Provinces accepting respectively the responsibility of administering the same.'

'the spirit of Confederation contemplated. That is not 'as it should be, and there is beginning to be felt all over 'the Province among those who are doing their best to 'develop the resources of the country . . . an im- 'patience of being subjected to the same responsibility of 'Government and impositions of Customs and Excise, as 'are the citizens of other Provinces, whilst limited in the 'enjoyment of those sources of revenue allowed other 'members of Confederation for the prosecution of their 'own development . . .'①

'That this state of affairs should continue is neither 'fair to the Province nor creditable to the Dominion, and 'as the Federal Authorities are responsible for the dis- 'criminating limitations and restrictions imposed upon 'the Province, the undersigned feels it his duty to report 'these facts . . . for submission to the Privy Council, 'who, by a timely and favorable consideration of the 'subject, can avert consequences unpleasant to con- 'template.'②

The result of a delegation to Ottawa in May, 1884, was an agreement by the Federal Government that the 'swamp lands' at least 'shall be transferred to the Provincial Government and inure wholly to its benefit.'③ With the exception of the 'school lands' in which the control was vested in the Dominion while the beneficial interest accrued to the province, the 'swamp lands' were thus the first moiety—and remained, until they reverted to the Dominion in 1912, the only moiety —of the public domain in Manitoba in which British practices have ever obtained; and even here the precedent, it will be seen, was not British but American.

This utterly inadequate concession, however, was met by a vigorous protest (June 2, 1884):

'The proposal that this Province shall become possessed 'of only the swamp lands, together with the grant of '$45,000 a year, is not acceptable to this Legislature as

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①'And this feeling is intensified by the fact that the population of 'Manitoba is largely composed of settlers from the older Provinces who 'have been accustomed to enjoy all the franchises guaranteed Provincial 'Legislatures by the full application of the B.N.A. Act.'

②*Can. Sessional Papers*, 1883, Vol. 12, Paper No. 108.

③*Can. Sessional Papers*, 1885, Vol. 12, Paper No. 61.

'a compensation of the equitable claim that this Province 'has always preferred to all the lands thereof.'①

The humiliating result of the conference of December 20, 1884—January 10, 1885, has already been indicated. Premier Norquay was confronted at Ottawa with a bill of federal expenditures in the West 'from the cost of the expeditionary force down to the latest return of the surveys, as well as of moneys granted in annuities to the Indians.' The delegation in despair reverted to the proposal of 1881 'that the Dominion pay the Province annually the sum of $100,000 in lieu of lands'; and the 'finality clause,' already outlined, completed the discomfiture of the province in its miserably ineffectual attempt to secure from the Dominion Government 'payment for the lands already disposed of by them within the Province' and the 'control, management and sale of the Public Lands within its limits, for the public uses thereof.'②

The granting of the 'subsidy in lieu of lands' was interpreted, it has been seen, even by Sir Wilfrid Laurier, as proof that the 'guiding principle'③ of Confederation with regard to the public domain was 'not absolutely departed from in the case of Manitoba.'④ It is apparent, however, that though this may have been true with regard particularly to the lands already premanently alienated from provincial control, the principles at the root of the whole issue were by no means conceded. Even the transfer in 1884 of the 'swamp lands' to the province 'to inure wholly to its benefit' was based, like

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①*Journals of the Leg. Assembly*, Manitoba, 1885, Vol. xvi, Appendix A. Cf. *Can. Sessional Papers*, 1883, Vol. 12, Paper No. 108: 'During the 'recent elections which took place in the Province, the question of the 'acquisition of the Public Lands was fully discussed at the polls. The 'unanimous opinion of the electors was that the Province should be placed 'on the same footing . . . as are the other Provinces of Canada . . . 'irrespective of the policy pursued by the U.S. towards their territories 'when admitted into the Union.'

②Address to Governor-General, June 2, 1884, *Journals of the Leg. Assembly*, Manitoba, 1885, Vol. xvi.

③'That the provinces were entitled to the public lands as a source of 'revenue to administer to the growing wants of the population.' Sir Wilfrid Laurier to Hon. A. L. Sifton, August 7, 1911.

④*Ibid.*

the 'school lands,' upon American rather than British precedent. In fact, there were no precedents at that time, either within Canada or without, for the ruthless appropriation of all the natural resources of the West 'for the purposes of the Dominion'; and the Federal Government met the demand 'that the residue of ungranted land shall be handed over to the Province for the purpose of local revenue'① by what must be regarded as one of the most astonishing avowals in Canadian constitutional history.

A Report of a Committee of the Canadian Privy Council, approved March 7, 1882, reads in part as follows:

> 'The analogy which the delegates see between lands in 'other Provinces and those in Manitoba does not seem 'to the Committee of Council to be well drawn inasmuch 'as the other Provinces owned their land before Con-'federation and brought them into the Union with them 'as their own property; whereas, the whole of Manitoba 'was acquired by the Dominion by purchase from the 'the Hudson's Bay Company, and thus became the 'property of the Dominion, and stands really, as it 'seems to the Committee of Council, in the same position 'as lands in the Territories of the United States, which 'are not given to new States as these new States are 'created, but remain the property of the United States.' ②

Similarly the well-known Report of the Committee of the Canadian Privy Council, approved May 30, 1884, and quoted rather more frequently, it is only fair to add, in that generation than in this:

> 'The lands of Manitoba held a very different position, in 'relation to the Dominion Government, from the lands 'of the other provinces. Shortly after the union of the 'old provinces, the Government formed from that union 'purchased at a large price in cash③ all the rights, title 'and interest of the Hudson Bay Company, in and to the 'territory out of which the Province of Manitoba has 'been formed; it incurred, further, a very large ex-

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①*Journals of the Leg. Assembly*, Manitoba, 1881, Appendix, cxx.
②*Can. Sessional Papers*, 1882, Vol. 10, Paper No. 82a.
③For the 'large price in cash', see Chapter III., p. 35.

'penditure to obtain and hold this territory in peaceable 'possession,① and at a still further cost which is continu- 'ous and perpetual, in extinguishing Indian titles and 'maintaining the Indians,② so that the Dominion Govern- 'ment has a very large pecuniary interest in the soil . .

'It was urged by the delegates that the Canadian 'Pacific Railway is being constructed in fulfilment of the 'terms of union with British Columbia . . . Parlia- 'ment would not have gone beyond the original propo- 'sition of a waggon road had the Dominion Government 'not been the owner, by purchase, of a large territory, 'which would be . . . largely contributory to the 'cost . . .

'In 1880 Parliament solemnly set aside one hundred 'million acres of those lands towards meeting the cost of 'the work . . . It was not to be expected that the 'lands could be made available to meet a cash expenditure 'until some time after railway connection was had with 'and through them; and therefore, the expenditure in 'construction and in cash subsidy, may be regarded as an 'advance, to be repaid from the lands . . .

'The attention of the Sub-Committee has been 'directed to the procedure of the Federal Government of 'the United States, in the organization of new States, 'and they find that it rigidly retains the public lands of 'the State except those it may appropriate for specific 'purposes, allotting to the State only swamp lands③. . .

'The Sub-Committee submit that it is expedient to 'recommend to Parliament a modification of this arrange- 'ment . . .'④

It will not be necessary to trace here in detail this application of American precedent—on the whole defended by

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①By the same argument, Canada would seem to have a 'very large pecuniary interest in the soil' of Belgium.

②Cf. Address of House of Commons and Senate, December 16 and 17, 1867: 'The claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown.' Oliver, *Canadian North-West*, ii, 946.

In B.C. 'the charge of the Indians' was assumed by the Dominion by section 13 of the terms of union.

③For the inaccuracy of statement and of the analogy see below.

④*Can. Sessional Papers*, 1885, Vol. 12, Paper No. 61.

federal administrations both Conservative and Liberal until 1911—though one of the last, and least reserved, avowals of it was made upon a very memorable occasion as late, it will be seen, as 1905, at the introduction of the *Alberta* and *Saskatchewan Bills*. An examination even of the American system, however, would seem to indicate that as a state within the American Union, Manitoba would probably have received full title and sovereign ownership of every acre of the public lands within her boundaries.

Between the states of the American Union and the provinces of the Canadian Confederation there is at the outset a fundamental difference which would seem to go very far towards destroying the whole basis of comparison. As already indicated, the title to the public domain in the British Empire is 'vested in the Crown', and 'the Crown is one and indivisible throughout the Empire.' The only functions with regard to public lands exercised and enjoyed by any province or Dominion, even by the Parliament of Great Britain itself, are the administration of the same and the beneficial interest therein. Now when the thirteen American colonies secured their independence, each state became the 'successor to the Crown and colony in the ownership of the unappropriated and vacant lands within her limits, and to the land rights of the Crown.'① By the terms of the Treaty, the Crown of Great Britain recognized the United States as

> 'free sovereign and independent States, and that he 'treats with them as such, and for himself, his heirs, and 'successors relinquishes all claims to the government, 'proprietary and territorial rights of the same, and every 'part thereof.'

Full title and ownership, therefore, vested in the individual states of the Union. The unappropriated lands were their 'property' in a sense which has no parallel within the British Empire. Whether the Dominion of Canada was a

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①*The Public Domain, Its History, with Statistics*, 46th Congress, 3rd Session, Executive Document 47, Part 4, p. 33, etc.

landed entity at all by the *B.N.A. Act* of 1867, in view of the principles so clearly enunciated by Lord Haldane in the recent *Manitoba Initiative and Referendum Case*①; whether the Dominion as such was vested with landed rights by the provisions of the *Rupert's Land Act*; whether the Federal Parliament had, or in fact has, powers to grant provincial status and antonomy by virtue of the *B.N.A. Act*, 1871, section 2, in accordance with any other provisions in respect of public lands than those of the *B.N.A. Act* of 1867;② whether section 21 in the *Alberta* and *Saskatchewan Acts* providing for the administration of the crown lands 'by the Government of Canada for the purposes of Canada' could be shown by a test case before the Judicial Committee of the Privy Council to have been *ultra vires* of the Federal Government; these are purely legal questions upon which there may be difference of opinion. With regard, however, to the constitutional principles involved—the political as distinct from the purely statutory or legal 'rights' of the case—there would seem to be no question whatsoever. The 'ownership' and 'title' of 'ungranted or waste lands' is 'vested in the Crown', and the process of divesting the Crown of the beneficial control of the public lands is just a part of the larger process of devolution which has transformed Britain from a true monarchy to a democracy. The only point at issue would seem to be how far that devolution of beneficial control over the 'ungranted' and 'waste lands' of the Crown has gone or ought to go; and by precedent which has obtained throughout the self-governing provinces of the British Empire, it is submitted that the beneficial interest, at any rate, in the public domain cannot rest short of self-governing provinces under responsible government.③ Whatever may be the purely statutory or legal powers of the Dominion, therefore,

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①*Law Journal Reports*, Nov., 1919, pp. 142 *et seq.*

②'Subject to the provisions of this Act.' *B.N.A. Act*, 1867, section 146.

③Cf. Sir Robert Borden, 1905: 'He (Sir Wilfrid Laurier) said it might interfere with the operation of the policy of the government with respect to immigration. So far as the rest of his argument is concerned, it would have justified the retention by the Imperial Government up to the present time of every acre of Crown Lands in Canada.' *Hansard*, 1905, p. 1462.

in respect of public lands (apart altogether from the means taken in the case of Manitoba to acquire and exercise those powers) these must be regarded by their very nature (if permissible at all) as fiduciary in character for self-governing provinces until the full beneficial control is vested where it must ultimately belong.

The original states of the American Union, therefore, 'owned' their public lands① in 1783 and could dispose of them as they chose, untrammelled by the constitutional procedure which afterwards came to prevail in the British Empire. In view of the fact, however, that the area ceded by Great Britain included some 400,000 square miles of disputed territory beyond the original boundaries of the thirteen states, there arose a conflict of claims for the hinterland until the various states concerned agreed to cede the disputed territory to the National Government. The nucleus of the 'public domain' of the United States, therefore, originated in the cession, by a sort of 'self-denying ordinance', to the National Government, with full sovereign title, of over 400,000 square miles of territory by the States of New York, Virginia, Massachusetts, Connecticut, South Carolina, North Carolina and Georgia.② It is seen, therefore, that the 'cession' of Rupert's Land and the North-Western Territory to Canada by the Crown more than three-quarters of a century later conveys a vastly different import, for the whole theory and practice of responsible government in British provinces had been evolved in the meantime③; and it is not on record in any case that the original provinces of Canada have ever contemplated self-denying ordinances in order to constitute,

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①'In the United States we have adopted a fundamental principle of the English law, derived from the maxims of the feudal tenure, that "the King (State) is the original proprietor or lord paramount of all the land in the Kingdom, and the true and only source of title."' *The Public Domain*, 46th Congress, 3rd Session, Executive Document 47, Part 4, p. 158.

②Ranging in date from 1781 to 1802. Virginia alone ceded 265,562 square miles.

③'Acts of State, authorised by Imperial Statute', with 'all the force and permanence of fundamental law'. Canadian delegates, March 18, 1869, *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 44.

by generous cessions of territory, the areas known under the Act of 1872 as 'Dominion Lands.'

Now it is an interesting fact that even here American precedent would seem to support the claims of Manitoba. Out of this 'public domain' (in the American sense) as provided by cession from seven of the states of the Union, many states were created without previous territorial status such as obtained in many of the districts afterwards purchased by the National Government from other sovereign powers. In the case of these 'Legislative States', as they were called (Kentucky, Vermont, Tennessee, Maine, West Virginia, etc.), admission to the Union carried with it not merely beneficial control but full title and sovereignty over the public lands within their boundaries. In fact this is the case even with regard to Texas, which was annexed in 1845. West Virginia came into the Union with full title to public lands as late as 1862. It will be remembered that Manitoba came into the Canadian Confederation with provincial organization in 1870 and without previous territorial status under the Dominion. The same Order in Council which effected the transfer of this district from the Crown made of it a Canadian province; and as already pointed out, British (not to say American) principles apply here with peculiar directness and cogency to the whole Canadian period of our history since 1870.

In addition to this 'ceded' national 'public domain' in the United States, however, the National Government secured at various times by purchase, conquest or treaty, a vast area of nearly 2,500,000 square miles at a total cost of over $88,000,000. These areas were organized with territorial status, and from these territories states were subsequently created and admitted to the Union. It became a practice for the National Government in the constitution of these 'Land States,' as they came to be called, to retain control of the 'public domain', after making special grants, however, of school lands, university lands, swamp lands, etc., to the state. It is not difficult to recognize in the 'school lands' of Manitoba, railway land grants, 'swamp lands' (granted to the province in

1884 and reverting to the Federal Government in 1912), and in many details of administration, survey, etc., the results of American example; but one looks in vain for such provisions as the *State Selection Act*, 1841, by which 500,000 acres for the purposes of 'internal improvements' were granted 'to each State that shall hereafter be admitted into the Union.'① By the time that American precedents were first avowed by the Dominion with regard to Manitoba, no fewer than seventeen states had received 7,800,000 acres in this way. Measures like the United States *Distribution Act*②, the 'Canal Wagon and Railroad Grants' to various states of the Union, the 'Two, Three and Five per cent. Funds' upon the 'net proceeds of the sales of public lands' allowed to many states 'from the date of admission into the Union,' are not in evidence in the case of Manitoba.③ It was twelve years after attaining provincial status before this province found the Federal Government 'willing to allow to Manitoba' the sum of $45,000 a year, 'as is done in P.E.I.,' in lieu of lands.④

Despite the fact that American precedent was more convenient in 1884 than it would now appear to be convincing, the policy then enunciated passed currency with Federal Governments at Ottawa for twenty-five years, though not without protest, both federal and provincial, in favor of sounder principles of British procedure. It is necessary in the interests of historical fact to observe that the American

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①Executive Documents, 46th Congress, 3rd Session, Vol. 25, p. 129, etc.

②Of 1841, by which 90 per cent. of 'all the net proceeds of the sales of public lands in all the States subsequent to December 31, 1841, were to be divided *pro rata* among the twenty-six States and the Territories of Wisconsin, Iowa, and Florida, and the District of Columbia, according to respective Federal population.' The *Public Domain*, 46th Congress, 3rd Session, Executive Document 47, Part 4, p. 256.

③*The Public Domain*, 46th Congress, 3d Session, Executive Document 47, Part 4, p. 256, etc.

Cf. Report of Committee of Can. P.C., May 30, 1884: 'The attention 'of the Sub-Committee has been directed to the procedure of the Federal 'Government of the United States, in the organization of new States, and 'they find that it rigidly retains the public lands of the State except those 'it may appropriate for specific purposes, allotting to the State only swamp 'lands which, when drained become a source of profit.' *Can. Sessional Papers*, 1885, Vol. 12, Paper No. 61.

④*Can. Sessional Papers*, 1882, Vol. 10, Paper No. 82a.

system, or rather the perversion of it avowed by the Canadian Privy Council, 1880-84, received perhaps its most unqualified endorsation for this generation at the introduction of the *Alberta* and *Saskatchewan Bills* in 1905:

> 'This is a case in which we can go to the United States 'for precedents. They are situated very much as we are 'regarding the ownership of lands and the establishment 'of new states. Whenever a new state has been created 'in the American Union, the Federal Government has 'always retained the ownership and management of the 'public lands . . .'①

Beyond a doubt the requirements of the situation in 1905 were very difficult, and sections 20 and 21② of the *Alberta* and *Saskatchewan Acts* were advocated, and eventually drafted, as offering 'the soundest argument with which to appeal both to the people of the new provinces and to the people of the older provinces.' The same may perhaps be said of the *Manitoba Boundaries Extension Act* of 1912, when this province was placed upon an equal footing with the two other Prairie Provinces with regard to area and 'subsidy in lieu of lands.'③ The fact remains, however, that the basis of the subsidy 'in lieu of public lands' in 1905 was necessarily more or less arbitrary, and the Premiers of the three Prairie Provinces (Hon. Messrs. Sifton, Scott and Roblin) in December, 1913, in the attempt to reach a common basis for the perplexing differences of status and development between the three provinces concerned, were forced into a position

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①'We know that when Manitoba was brought into the Dominion, that 'province was not given the ownership of her lands . . . Her application 'was always met in the same way. It was always met by the statement that 'it was impossible to grant her request. The matter was finally closed in '1884 when the Government of Sir John Macdonald . . . gave very 'forcibly and clearly the reasons why the prayer of that province could not 'be entertained.' Sir Wilfrid Laurier, *Hansard*, 1905, p. 1431.

②Providing for the subsidy 'in lieu of public lands' and for the administration of 'All Crown lands, mines and minerals and royalties incident thereto . . . by the Government of Canada for the purposes of Canada.'

③'The legislation was intended to place Manitoba on a basis of equality 'with Saskatchewan and Alberta. So far as I can comprehend the situation 'it did not mean more than this.' Sir Robert Borden to Premier Scott, January 9, 1913.

which has been completely misunderstood and misinterpreted by other provinces of Canada as a proposal to 'retain the money and get the lands into the bargain':

> 'that the financial terms already arranged between the 'Provinces and the Dominion as compensation for lands 'should stand as compensation for lands already 'alienated for the general benefit of Canada, and 'that all lands remaining within the boundaries of the 'respective Provinces, with all natural resources included, 'be transferred to the said Provinces.'①

It must be emphatically repeated at this point that the subsidy in lieu of lands in Manitoba was first demanded for lands already alienated ('in consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway'); that it was conceded 'as is done in P.E.I.'; and that from the standpoint of this province the present subsidy will be found to be an altogether inadequate compensation for the resources alienated during the past fifty years 'by the Government of Canada for the purposes of the Dominion.' It will be sufficient here to remark that the proceeds of the railway and Hudson's Bay land sales alone (December 31, 1917) had reached the total of $178,000,000 from the grants made to them from the public domain of the West, and that over 14,500,000 acres still remained to be disposed of. For practical purposes, therefore, the historic claims of this province might be formulated in less general terms as:

> (*a*) the unrestricted beneficial control of all public lands and natural resources within the boundaries of the province hitherto unalienated;
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> (*b*) compensation at a fixed equitable rate per acre② for all lands within Manitoba alienated to the Hudson's

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①Premiers Scott, Roblin and Sifton to Premier Borden, December 22, 1913.

②The futility of any method of determining equitable 'compensation' by balancing Dominion receipts and expenditures from 'Dominion Lands' is obvious, since in the case of practically all the chief alienations the lands have been granted free, while 'the purposes of the Dominion' are attained indirectly in other ways. Cf. railway land grants and free homesteads, and the high per capita customs revenues from new settlers.

Bay Company at the transfer, and under section 30 of the *Manitoba Act* 'by the Government of Canada for the purposes of the Dominion'; such compensation to be made by way of annual payments at 5 per cent., and to be reckoned as from the date of alienation, less the amounts received as subsidies in lieu of lands.

SUMMARY

1. Two considerations were chiefly responsible for the agitation for 'provincial rights over the land', viz., the intolerable financial burdens for 'local works' on account of the free homestead and immigration policy of the Dominion, and the practice of lavish grants for railways.

2. Claims of Manitoba (*Memorandum*, Feb. 12, 1881) were advanced (*a*) that a subsidy of $100,000 (the same as in B.C.) be granted 'in consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway', (*b*) that 'the residue of ungranted land shall be handed over to the Province for the purpose of local revenue.'

3. The case of P.E.I. ($45,000) was substituted by the Dominion for that of B.C. ($100,000), and the grant was eventually made (1882) 'as is done in P.E.I.' (*Report of Committee of Can. P.C.*) It may be contended, therefore, that both the original claim 'in consideration of the lands within Manitoba appropriated . . . for the building of the Canadian Pacific Railway' and the grant substituted for it 'as is done in P.E.I.', are based not upon future control of 'ungranted or waste lands in the Province' but upon lands already permanently alienated without regard to the beneficial interest of the community. (Cf. the proposals of Dec. 22, 1913, 'that the financial terms already arranged . . . as compensation for lands should stand as compensation for lands already alienated for the general benefit of Canada.')

4. 'Swamp lands' were transferred to the province in 1884, but the subsidy of $100,000 in lieu of lands in 1885 was made contingent upon the 'finality clause'. This completed the discomfiture of the province in the attempt to secure 'payment for the lands already disposed of . . . within the Province' and the 'control, management and sale of the Public Lands within its limits, for the public uses thereof.'

5. The 'subsidy in lieu of lands' was interpreted even by Sir Wilfrid Laurier as proof that the 'guiding principle' of

Confederation in respect of lands was 'not absolutely departed from in the case of Manitoba.' The principles at the root of the whole matter, however, were not conceded, and the Dominion met the demand 'that the residue of ungranted land shall be handed over to the Province for the purpose of local revenue' by one of the most astonishing avowals in Canadian constitutional history.

6. 'The whole of Manitoba was acquired . . . by purchase . . . and thus became the property of the Dominion, and stands really . . . in the same position as lands in the Territories of the United States, which are not given to new States . . . but remain the property of the United States.' (*Report of Committee on P.C.*, approved March 7, 1882).

7. 'The Government . . . purchased at a large price 'in cash, all the rights . . . in and to the territory out 'of which the Province of Manitoba has been formed; it 'incurred, further, a very large expenditure to obtain and 'hold this territory in peaceable possession, and . . . in 'extinguishing Indian titles and maintaining the Indians, so 'that the Dominion Government has a very large pecuniary 'interest in the soil . . .

'The expenditure in construction (C.P.R.) and in cash 'subsidy, may be regarded as an advance, to be repaid from 'the lands . . .

'It ("the Federal Government of the United States") 'rigidly retains the public lands of the State except those it 'may appropriate for specific purposes, allotting to the 'State only swamp lands . . .

'It is expedient to recommend to Parliament a modification 'of this arrangement . . .' (*Report of Committee of P.C.*, approved May 30, 1884).

8. This avowal of American precedent was defended by federal administrations both Conservative and Liberal until 1911, though even under the American system the evidence would seem to support the claims of Manitoba.

9. A fundamental difference exists between the British and American systems. In the British Empire title to all public domain is 'vested in the Crown'; and whatever may be the difference of opinion with regard to purely statutory or legal rights of the Dominion, the constitutional or political rights of the Province to the beneficial interest in the public domain and ultimate control thereof would seem to be unimpeachable. Statutory powers of the Dominion, therefore

(altogether apart from the way these were acquired), must be regarded as fiduciary in character and intermediary, under responsible government, between the Crown and self-governing provinces where full beneficial control must ultimately be vested.

10. In the United States, each separate state became, at independence, the 'successor to the Crown and colony in the ownership of the unappropriated and vacant lands' in a way which has no parallel in the British Empire.

11. The nucleus of the national 'public domain' of the United States originated in cessions to the National Government with full sovereign title, of over 400,000 square miles of hinterland by seven of the thirteen states. It is not on record that the other provinces of Canada have ceded territory to form 'Dominion Lands.'

12. The States (Maine, Vermont, Tennessee, West Virginia, Kentucky, etc.) organized without previous territorial status out of this ceded 'public domain' received full sovereign title and ownership of the lands within their boundaries. Manitoba came into Confederation as a province without previous territorial status, and her territory had been 'ceded' by the Crown by 'Acts of State, authorised by Imperial Statute', with 'all the force and permanence of fundamental law', long after the principles of responsible government with all its implications had been everywhere conceded.

13. Even Texas, annexed in 1845, received as a state without previous territorial status, the full title to public lands; and though the districts from the 'Louisiana purchase,' etc., were organized after varying periods of territorial status into 'Land States', with the public domain still vested in the National Government, measures like the *State Selection Act*, the *Distribution Act*, the 'Canal Wagon and Railroad Grants' to various states, the 'Two, Three and Five per cent. Funds', etc., are not in evidence under the American system as applied by the Dominion to Manitoba. The U.S. Government was represented (*Committee of P.C.*, May 30, 1884) as 'allotting to the State only swamp lands.' Even these were taken away from Manitoba in 1912.

14. Unreserved avowals of American principles were made as late as 1905, at the *Alberta* and *Saskatchewan Bills*: 'This is a case in which we can go to the United States for precedents . . . Whenever a new state has been created in the American Union, the Federal Government has always

retained the ownership and management of the public lands.' (*Sir Wilfrid Laurier*).

15. Basis of subsidy in 1905 and 1912 was more or less arbitrary, but the proposal of December 22, 1913 (present subsidy as 'compensation for lands already alienated') was occasioned by the necessity of reaching a common basis for the perplexing differences of status and development between the three provinces concerned.

16. Manitoba's original 'subsidy in lieu of lands' was 'in consideration of lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway'; and even the present subsidy is altogether inadequate for resources alienated for fifty years 'for the purposes of the Dominion.' Railway and H.B. Co. land sales alone (Dec. 31, 1917) amounted to $178,000,000, and there are 14,500,000 acres left.

17. Claims of Manitoba may thus be stated in less general terms as:

(*a*) Unrestricted beneficial control of all public lands and natural resources hitherto unalienated.

(*b*) Compensation at a fixed equitable rate per acre for all lands within Manitoba alienated to the H.B.C. at the transfer, and under section 30 of the *Manitoba Act* 'by the Government of Canada for the purposes of the Dominion'; such compensation to be made by way of annual payments at 5 per cent., and to be reckoned as from the date of alienation, less the amounts received as subsidies in lieu of lands.

18. The balancing of Dominion receipts and expenditures from Dominion lands is obviously a futile method of determining equitable 'compensation.' Chief alienations have been free grants, 'the purposes of the Dominion' being attained indirectly in other ways. Cf. railway land grants and free homesteads, and the high per capita customs revenues from new settlers.

IX.

BRITISH PRINCIPLES IN THE ASCENDANT: PROVINCE OR COLONY?

The half-century of conflict for 'provincial rights' in Manitoba and the ascendancy of sound British principles at Ottawa are counterparts of the only process which would seem to offer promise of settlement of the 'Natural Resources Question.' With regard to the first, the name of Premier Norquay will always hold a conspicuous—and as the first native premier of the province perhaps a pre-eminent—place. The memoranda drawn up by him in his 'fight for provincial rights' may be classed among the important state papers of the Dominion. Based not upon reasoned constitutionalism but upon the practical requirements of the case, the insistent demands for 'payment for the lands already disposed of . . . within the Province,' and the 'control, management and sale of the Public Lands within its limits, for the public uses thereof,'① are in a sense very typical of that unerring practical political instinct among British peoples which raised the whole question of responsible government in the first place and applied the principles then vindicated to all the self-governing provinces and Dominions of the Empire.

Premier Norquay's long contest with Ottawa closed like his own sturdy career in his native province, in a courageous but ineffectual attempt to cope with conditions that were too strong for him or perhaps for any man. For the counterpart of Premier Norquay's work, it is necessary to look to sound constitutionalism at Ottawa; and the outstanding name in this respect is beyond doubt that of Sir Robert Borden himself. It will not be necessary to trace in detail the gradual emancipation of federal policy from the tangle of opportunism and necessity which so long prevailed during the formative period

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①Address to Governor-General, June 2, 1884, *Journals of the Leg. Assembly*, Manitoba, 1885, Vol. xvi.

of Canadian history after Confederation. The problems which confronted the builders of the Dominion were perhaps as formidable as any which have ever been surmounted in such a cause, and it would be altogether less than just to disparage in any way the massiveness of their conceptions or their courage in achievement. Beyond a doubt, however, the expedients that were found to be necessary were heroic in more senses than one, and as Lincoln once said with regard to the American Civil War, constitutional principles must be regarded as having had 'a rough time of it.' The hour is now more propitious. The sound and discerning constitutionalism which has guided our national destinies abroad would appear to be the only line of policy which is capable of solving the anomalies of Confederation at home. It is altogether fitting and proper—indeed there are very specific reasons why it would appear to be necessary①—that these two processes should be consummated at the same time.

The ascendancy of British principles up to the Conference of November, 1918, must be traced very briefly: as briefly at least as it may be deemed advisable in default of the publication of the documents upon the subject.

At the introduction of the *Alberta* and *Saskatchewan Bills* in 1905, Sir Robert Borden, then leader of the opposition, defined the constitutional principles involved by advocating, as

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①The reversion of the natural resources of Manitoba to the province would seem to require an Imperial Act to amend the *B. N.A. Act* of 1871. Perhaps this may possibly be true also with regard to Alberta and Saskatchewan, by the terms of the *B. N.A. Act* of 1871, section 6; though Sir Robert Borden would seem to regard a federal Act 'with the consent of the Provincial legislature' as sufficient. *Hansard*, 1905, p. 1466.

Cf. also the 'Halifax platform' of 1907: 'The restitution of the public lands to the Provinces of Alberta and Saskatchewan upon fair terms.' (Manitoba not included.)

In view of this fact the recent proposal to secure for the Dominion, powers to amend the *B. N.A. Act* 'with the consent of the Provincial Legislatures' could scarcely be acquiesced in by the Prairie Provinces—by Manitoba at any rate—without insisting upon *the full settlement of the historic claims of this province first.* Any other course would seem (*pace* the attitude of the other provinces at the Conference of November, 1918) to invite the postponement of the settlement of the 'Natural Resources Question' for this province to the Greek Calends.

already noted, 'exactly the same control over their land as is enjoyed by the people of the other provinces':

> 'He (Sir Wilfrid Laurier) said it might interfere with the 'operation of the policy of the government with respect to 'immigration. So far as the rest of his argument is con- 'cerned, it would have justified the retention by the 'Imperial government up to the present time of every acre 'of Crown Lands in Canada . . . '

With regard to Durham's recommendation in 1839 for Imperial control of crown lands in the interests of an Imperial policy of colonization:

> 'It was soon found . . . that it was absolutely im- 'practicable—that to the people living in and developing 'any dependency must be entrusted, and might be safely 'entrusted, the entire control of the public lands . . .'
>
> 'So far as the control of the lands is concerned, I adhere 'to the opinion I before expressed in this House: that the 'people of the northwest when they are granted provincial 'rights . . . are entitled to the control of these lands 'just as much as the people of the eastern provinces of 'Canada are entitled to the control of their provincial 'domain. I see no distinction.'①

It is well known that Sir Robert Borden advocated in 1907② 'the restitution of the public lands to the provinces of Alberta and Saskatchewan upon fair terms.' Manitoba admittedly presented, and still presents, many exceptional features: in the fact that there was no previous territorial status, in the exceptionally long period of 'responsible government' without 'full rights over the land in return,' in the comparatively limited resources now available to the province in any case after the lavish alienations of half a century, and in the statutory reduction of the province to 'colonial' status by Imperial Act drafted from Ottawa 'for all purposes whatsoever.' In a very closely-reasoned statement in Winnipeg, however, in June, 1911, Sir Robert Borden expressed the opinion that all three Prairie Provinces were entitled to the 'just recognition of their un-

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① *Hansard*, 1905, pp. 1462, 2929.

② 'Halifax platform.'

doubted rights to their public lands and natural resources'①; though as Premier of the Dominion, two years later, Sir Robert Borden pointed out that even in the cases of Alberta and Saskatchewan, there were already (February 24, 1914) serious complications which had 'now to be surmounted':

> 'If the course which we then (1905) advocated had been 'carried out . . . the difficulties which have now to 'be surmounted before those natural resources can be 'transferred to the western provinces would not present 'themselves to Parliament and the Government to-day.'②

A conference which had taken place at Ottawa during the previous October had resulted in the submission of the well-known proposal of December 22, 1913, by the three western Premiers, Hon. Messrs. Sifton, Scott and Roblin:

> 'that the financial terms already arranged between the 'provinces and the Dominion as compensation for lands 'should stand as compensation for lands already alienated 'for the general benefit of Canada, and that all lands 'remaining within the boundaries of the respective Pro-'vinces, with all natural resources included, be transferred 'to the said Provinces.'

During the correspondence which ensued it was pointed out by Premier Borden that several important topics discussed at the Conference had not been touched upon in the

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①'To-day in Canada six provinces enjoy the right to control and ad-'minister the public lands, mines, mincrals, and other natural resources within 'their boundaries. That right is not enjoyed by the three Prairie Provinces . . . The Public Lands and Natural Resources are vested in the Crown, 'to be administered for the benefit of the people. In six Provinces the Crown 'in dealing with the Public Domain, acts upon the advice of the Provincial 'Ministers, and under the laws enacted by the Provincial Legislatures. In the 'three Prairie Provinces the Crown in dealing with such lands acts upon the 'advice of the Federal Ministers and under laws enacted by the Federal 'Parliament.

'Why should there be any such discrimination against the people of these Provinces?' Winnipeg *Telegram*, June 20, 1911.

②*Hansard*, 1914, Vol. ii, p. 1069.

formal proposal of December 22, 1913①; while the provincial Premiers defended their emphasis upon the financial terms upon the grounds that that proposal had been

> 'based upon the two fundamental principles which were 'enunciated by yourself in explaining your policy on this 'question in Western Canada and which were discussed 'at the interview—first, the right of the provinces to the 'ownership of the public domain, and second, their right 'to compensation for such portions of the same as have 'been alienated for the general benefit of Canada.'②

Premier Borden's reply, dated March 10, 1916, re-affirmed the necessity of including other 'fundamental aspects of the subject' in the discussion, and concluded by observing that:

> 'With respect to these considerations the conditions in 'the three Provinces are possibly not altogether similar; 'and each of the three Provinces is entitled to have its 'point of view considered . . .'

Without over-emphasizing here either the obvious difficulties of reaching a uniform, as distinct from an ultimately equitable, basis of settlement for the three provinces concerned, or the advantages which may be found (even from the standpoint of ultimate fiscal equality) by an adherence to the 'first principles' outlined in this memorandum, the remaining course

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①'At your interview with me on the 29th of October last, the following 'among other considerations were discussed in connection with the proposed 'transfer:

> '1. The readjustment of the financial terms which under the Alberta 'Act and the Saskatchewan Act and under the Act of 1912 extending the 'boundaries of Manitoba were accorded to the respective Provinces in 'lieu of natural resources and in compensation therefor.
>
> '2. An arrangement with the respective Provinces by which the present 'provisions with respect to homesteading could be retained in force.
>
> '3. Other stipulations which might be regarded as necessary or desirable 'for the purpose of assuring conditions that would not militate against 'a continued flow of desirable immigration.

'Your letter (Dec. 22, 1913) alludes only to the first of the three subjects then 'briefly discussed . . .' Premier Borden to Premiers Roblin, Scott and Sifton, March 5, 1914.

②Premiers Scott, Sifton and Norris to Premier Borden, Nov. 30, 1915.

of negotiations to the present time may be outlined very briefly.

With the exception of an interchange of letters in the spring of 1916 with regard to the 'school lands,' the 'Resources Question' was naturally lost to sight in the issues raised by the war. It was not until November, 1918, that a further Conference was arranged at Ottawa for the consideration of the whole question. The Federal Government, however, in the absence of Sir Robert Borden, placed the matter before a 'Conference of representatives of all the provinces of Canada' with an intimation that

> 'the Government was disposed to give favourable con-'sideration to the request for the transfer of the natural 'resources, and it was also intimated that the request for 'the continuance of the subsidy being paid to the Provinces 'in lieu of their lands would not be opposed, provided that 'it was mutually satisfactory to the other Provinces of 'the Dominion.'

The immediate result of the conference was a resolution by the representatives of all but the Prairie Provinces, to the following effect:

> '*Whereas* the representatives of the Government of Can-'ada have intimated to the Conference that they consider 'favorably the request of the provinces of Manitoba, 'Saskatchewan and Alberta, that the ungranted or waste 'lands and other natural resources within their limits, now 'vested in His Majesty in the right of Canada, be trans-'ferred to His Majesty in the right of the said provinces 'under certain conditions and restrictions—be it therefore
>
> '*Resolved* that the representatives of the following 'provinces; namely: Ontario, Quebec, Nova Scotia, New 'Brunswick, Prince Edward Island, and British Columbia 'desire to put themselves on record as declaring that in 'the event of the special allowances in lieu of lands 'provided for by the Acts of Parliament 4-5 Ed. vii, 'cc. 3 and 42① and 2 Geo. v, cc. 32, 40 and 45② 'being maintained in whole or in part, a proportionate

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①*Alberta Act*, 1905, and *Saskatchewan Act*, 1905.

②*Manitoba Boundaries Extension Act*, 1912, *Ontario Boundaries Extension Act*, 1912, and *Quebec Boundaries Extension Act*, 1912.

'allowance calculated on the basis indicated in the 'said Acts be granted to each of the other provinces 'of Confederation—reserving however any special claim 'on the part of any province in respect of the pro- 'posed transfer or arising out of the Acts of Par- 'liament 35 Vict., c. 23① and 2 Geo. v. cc. 32, 40 and '45②, or upon any other ground whatsoever; and the 'representatives of the Maritime Provinces asserting their 'right to have their special claims referred to herein ad- 'justed at the same time as the lands and natural resources 'are transferred to the Provinces of Manitoba, Saskatche- 'wan and Alberta.'

It may thus be said that pending the return of negotiations to normal federal channels, the 'Natural Resources Question' has now been consigned to the limbo of undetermined causes whence all the supplications of the Prairie Provinces for years to come would be powerless to effect deliverance.

It remains, before concluding, to consider briefly two fragmentary features of the 'Natural Resources Question' which would seem to call for special consideration.

In connection with the proposed return of the public domain to the Prairie Provinces there have been suggestions of 'certain reservations'③ which would appear to require a very clear-cut declaration of principle if the status of the Prairie Provinces within the Dominion is not to remain still very seriously impaired.

During the debate on the *Alberta* and *Saskatchewan Bills* in 1905, Sir Robert Borden in advocating 'exactly the same control over their lands as is enjoyed by the people of the other provinces,' suggested that:

'it would be the task of good statemanship to have inserted 'if necessary, a provision in this Bill with regard to free

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①*The Dominion Lands Act*, 1872, providing for 'school lands,' etc.

②*Manitoba Boundaries Extension Act*, 1912, *Ontario Boundaries Extension Act*, 1912, and *Quebec Boundaries Extension Act*, 1912.

③Premiers Norris, Martin and Stewart to Sir Thomas White, Nov. 19, 1918.

'homesteads and the prices of those lands, and obtain to 'it the consent of the people of the Northwest Territories.'①

Similarly in Sir Robert Borden's reply to the original proposal of Western Premiers on December 22, 1913, two 'aspects of the subject' under consideration are outlined as follows:

'2. An arrangement with the respective Provinces 'by which provisions with respect to homesteading should 'be retained in force or other suitable provisions assured.

'3. Such additional stipulations as might be con-'sidered necessary or desirable for the purpose of ensuring 'conditions that would not militate against a continued 'flow of desirable immigration.'②

Now the resolution from the representatives of the other provinces of Canada at the Conference of November, 1918, refers to the proposed transfer of the natural resources to provincial control as favoured by the Dominion 'under certain conditions and restrictions,' and it is submitted that arbitrary 'conditions and restrictions' with regard to the public lands would amount, as Sir Robert Borden himself suggested in 1905, to a concession of 'the principle that the government do not intend to hand them over.'③ Instead of the province being 'supreme' over its own public domain, 'directly under the Crown as its head,'④ the Dominion would still be exercising in Manitoba a 'suzerainty' which if applied to other provinces of Canada would be regarded as intolerable. Instead of becoming a full province of the Dominion, Manitoba would still remain a colony; with powers, it is true, somewhat enlarged in practice but with status almost as far removed as ever from the 'first principles' of responsible government and the *British North America Act* of 1867.

For there would seem to be no more fundamental principle in connection with the whole development of local control

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①'The lands ought to be handed over, but if we are to concede the principle that the government do not intend to hand them over, then in that case the best thing to do was that which I suggested.' *Hansard*, 1905, p. 5337.

②Sir Robert Borden to Premiers Norris, Scott and Sifton, March 10, 1916.

③*Hansard*, 1905, p. 5337. See note ① above.

④Lord Haldane, as already noted, in the *Manitoba Initiative and Referendum Case.*

over the public domain than the fact that the primary purposes of that local control were fiscal. It will not be necessary to repeat in detail the evidence upon this point. In 1864 the Colonial Office pointed out that 'Colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community.'① The Canadian Privy Council itself deplored the plight of Prince Edward Island in having 'no lands, the proceeds of the sale of which could, as in other British Colonies, be appropriated towards local improvements and the maintenance of Government.'② The subsidy of $45,000 in Prince Edward Island 'in lieu of lands' was granted because the province 'enjoys no revenue from that source for the construction and maintenance of local works.'③ The 'grant of full rights over the lands' was everywhere made, as Keith points out, 'in return for a civil list'④: a community which relieves the Crown of the expenses and obligations of government must be entrusted with the normal resources of the Crown for that purpose. These instances, taken at random from the evidence already adduced in other connections, could be multiplied if necessary from other sources. As Sir Wilfrid Laurier pointed out in 1911, 'the guiding principle' in Confederation with regard to the public domain was 'that the provinces were entitled to the public lands as a source of revenue to administer to the growing wants of the population in each Province.'⑤

These normal functions of the public domain 'for the purposes of local revenue' have remained for fifty years in Manitoba latent in the unconceded but 'undoubted rights' of the province to its 'public lands and natural resources.' In fact these have been so long latent that the rest of Canada seems almost instinctively to regard them as vested interests of the Dominion. It is a remarkable fact that while 'school lands'

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①*Correspondence relating to the Surrender of Rupert's Land*, 1869, Appendix iii, p. 68.

②*Can. Sessional Papers*, 1870, Vol. 5, Paper No. 31, p. 7.

③Clause 5 in the terms of union.

④*Responsible Government in the Dominions*, ii, 1047.

⑤Sir Wilfrid Laurier to Hon. A. L. Sifton, Aug. 7, 1911.

are supposed to yield revenues for education, and 'swamp lands' (from 1884 to 1912) 'when drained,' as the Canadian Privy Council pointed out, 'are fit for settlement and very valuable,' the most valuable lands of all which are 'immediately fit for settlement and tillage, and likely to be sought by immigrants' ① must still be alienated in free homesteads by Canada 'for the purposes of the Dominion.'

It may be said without much uncertainty that 'the potency of these observations in favor of a continuance of such a policy has passed away.'② It would be out of place here to discuss the advantages or disadvantages of the homestead policy of the Dominion; though a very profound modification of opinion with regard to the whole system in both Canada and the United States would not seem to be improbable when all the facts connected with it come to be impartially appraised. It is submitted, however, that some of the richest soil in North America must be regarded as a fiscal asset of the first magnitude to the province; and if in addition to the vast areas already permanently alienated from provincial control, that which remains and which ought to be within the beneficial control of the province 'for the purpose of local revenue' is still to be administered 'for the purposes of the Dominion,' the province is entitled to adequate fiscal compensation and to statutory safeguards which will leave full provincial status absolutely unimpaired. This is a case where a return to first principles would seem to be imperative. Free lands producing no revenues, rapid immigration producing educational and social problems of the first magnitude—these from the standpoint of the province are the 'seamy side' of Dominion policy which it must be 'the task of good statesmanship,' as Sir Robert Borden has observed, to forestall and alleviate.

The other feature of the 'Natural Resources Question' which invites comment is of equal moment, though it is more difficult perhaps, to discuss it with equanimity. The reference of the

①Sir Wilfrid Laurier to Hon. A. L. Sifton, Aug. 7, 1911.

②Hon. A. L. Sifton to Sir Wilfrid Laurier, March 20, 1911, with reference to the historic defence of the free homestead system, etc., in the Order in Council of May 20, 1884.

'Natural Resources Question' to a 'Conference of representatives of all the Provinces' in a purely provincial capacity would seem to leave the fiduciary obligations of the Dominion in administering the public domain of the Prairie Provinces to be determined by the other provinces of Canada on the basis of their own fiscal expediency. Acquiescence on the part of the Premiers of the Prairie Provinces would 'virtually establish an admission on our part that the other Provinces have a right to share in the beneficial interest in our public domain.①

It is possible that much of the hostility to the historic claims of Manitoba to full 'provincial rights for provincial status' has arisen from a misconception of the nature of provincial claims and even of the basis of past and existing subsidies 'in lieu of lands.' The resolution of 1918, already quoted, would seem to be particularly unfortunate in this respect. The transfer of the natural resources hitherto unalienated 'under certain conditions and restrictions' would imply the continuation of an intolerable federal 'suzerainty' over this province. At the Conference of November, 1918, 'the representatives of the following provinces, namely: Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, and British Columbia' contended that 'in the event of the special allowances in lieu of lands' (provided by the *Alberta* and *Saskatchewan Acts* and the *Manitoba Boundaries Extension Act*) 'being maintained in whole or in part, a proportionate allowance calculated on the basis indicated in the said Acts be granted to each of the other provinces of Confederation.' A calculation 'on the basis indicated in the said Acts' is scarcely possible in the cases of those provinces because the calculation of 1905 was based upon the estimated value ($37,500,000) of the public domain withdrawn from provincial control 'for the purposes of Canada.'② The provinces of Ontario, Quebec,

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①Premiers Norris, Martin and Stewart to Sir Thomas White, Nov. 19,1918.

②The basis of section 20 of the *Alberta* and *Saskatchewan Acts* was outlined as follows by Sir Wilfrid Laurier: 'As the public lands in the said provinces are 'to remain the property of Canada, there shall be paid by Canada to the said 'provinces annually by way of compensation therefor a sum based upon the 'estimated value of such lands, (namely $37,500,000); the same being assumed

Nova Scotia, New Brunswick and British Columbia have enjoyed full beneficial control of their public domain since the granting of responsible government. As already pointed out, the original subsidy in lieu of lands in Manitoba was demanded 'in consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway,' and was granted 'as is done in Prince Edward Island.'

Similarly the compensation demanded for the 'school lands' of the West would constitute not only an implicit denial to the Prairie Provinces of their 'undoubted rights to their public lands and natural resources' but a truly ironical penalty upon the Dominion Government for qualifying that denial even in the sovereign interests of education. It must be admitted also that the reservation of 'any special claim . . . upon any other ground whatsoever' for adjustment 'at the same time as the lands and natural resources are transferred to the provinces of Manitoba, Saskatchewan and Alberta' has a certain comprehensiveness about it which appears to be well calculated to defy any attempt at evasion.

Passing, however, from the 'Conference of the representatives of all the Provinces of Canada' in November, 1918, the issue would appear to be simplified in one important respect at least by the official views elsewhere expressed by the Premiers of the Maritime Provinces. With regard to the proposal of Premiers Sifton, Scott and Roblin (December 22, 1913), transmitted by the Federal Government, Premier Fleming of

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'to be of an area of 25,000,000 acres and to be of the value of $1.50 per acre, 'and upon the population of the said provinces as from time to time ascer- 'tained by the quinquennial census thereof, such sum to be arrived at as 'follows:

'The population of the said provinces being assumed to be at present '250,000, the sum payable until such population reaches 400,000 is to be one 'per cent. on such estimated value, or $375,000.

'Thereafter until such population reaches 800,000, the sum payable is to 'be one and one-half per cent. on such estimated value, or $562,500.

'Thereafter until such population reaches 1,200,000, the sum payable is 'to be two per cent. on such estimated value, or $750,000.

'And thereafter such payment is to be three per cent. on such estimated 'value, or $1,112,500.' *Hansard*, 1905. p. 1439.

New Brunswick expressed the opinion:

> 'As to the wisdom of these three prairie provinces having 'handed over to them the public lands is a question be- 'tween the federal Government and the provinces interested 'and affected, and I do not wish to express any opinion 'in relation to that question.'

Similarly Premier Murray of Nova Scotia, though protesting against the retention of 'both the lands and the money' by the Prairie Provinces as 'an entire disturbance of the financial arrangement between the various provinces,' conceded the fact that the public domain of the West was not the concern of the other provinces of Canada in their provincial capacity:

> 'I recognize the fact that the question of the wisdom of 'giving the provinces the lands is one between the Dominion 'Government and the western provinces.'①

Now it cannot be too strongly emphasized that the 'Natural Resources Question' is not two questions but one. It is not a question of lands and a question of subsidy but a question of public lands and public lands only as from the date of the assumption of the duties and obligations of responsible government. It is submitted that there is no justification for interpreting the compensation for natural resources alienated for half a century 'by the Government of Canada for the purposes of the Dominion' as a species of cash subsidy like that 'for the support of the Government and Legislature' or the 80c per capita grant to the provinces in return for the surrender of customs revenues to the Dominion. In a very real sense the compensation for alienated resources is not a subsidy at all. It is the equity due to this province from a usurpation which took place fifty years ago. It is part and parcel of the public domain as from 1870: nothing more and assuredly nothing less. In that sense even the 'two fundamental principles' cited by the three Western Premiers in defence of their proposal of December 22, 1918, are found to be in essence but one, for the 'right to compensation for such portions of the public domain as have been alienated for the general benefit of Canada' is but a corollary to the clear-cut and convincing challenge of

①Quoted by Sir Robert Borden, *Hansard*, Feb. 24, 1914, p. 1069, *et seq.*

Sir Robert Borden in inaugurating the ascendancy of British as distinct from American principles in 1905:

> 'The people of the northwest, when they are granted 'provincial rights . . . are entitled to the control 'of these lands just as much as the people of the eastern 'provinces of Canada are entitled to the control of their 'provincial domain. I see no distinction.'①

In conclusion it may be submitted, with all respect, that with the opinion as expressed above by Premier Fleming of New Brunswick and Premier Murray of Nova Scotia, the Prairie Provinces will be found to be in complete agreement.

It is a remarkable coincidence that the 'Natural Resources Question' should culminate in this two hundred and fiftieth anniversary of the granting of the Hudson's Bay Charter, the hundredth anniversary of the death of Selkirk—whose work of settlement in the West may be regarded as the one vested interest which withstood American expansion westward and northward during the nineteenth century—and the fiftieth anniversary of the entrance of Manitoba into Confederation: the quarter-millennium of the thing which made this western country British, the centenary of the thing which kept it British and the jubilee of the thing that made it Canadian.

It is altogether fitting that this should be, for the settlement of the 'Natural Resources Question' is a Canadian problem altogether much more fundamental than the nice adjustment of subsidies or the liquidation of all possible provincial 'claims' against the Federal Government. It is nothing less than the consummation of Confederation itself—a process which is necessary within the Dominion before the Dominion can take its rightful place among the autonomous British nations of the Empire. The only thing that would seem to be comparable to it in this respect is the projected Union of

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① *Hansard*, 1905, p. 2929.

the Maritime Provinces; but whereas 'Maritime Union' would be a superstructure to Confederation, a piece of constructive statesmanship inspired by a vision of the future, the 'Natural Resources Question' is a flaw in the very cornerstone of Confederation, aggravated and complicated by half a century of wrong.

It is seldom that a definite principle has been more carefully safeguarded in constitutional legislation than full provincial 'rights over the land' in the *British North America Act* of 1867. There is perhaps no more distinctive feature of that great measure, for as Lord Durham remarked more than eighty years ago, 'the function of authority most full of good or evil consequences has been the disposal of public land.' Those functions were committed deliberately to the separate provinces. By the provisions of section 146 of the *British North America Act* of 1867, even the subsequent admission of British Columbia, Prince Edward Island, Newfoundland, Rupert's Land and the North-western Territory was made 'subject to the provisions of this Act.' There is no 'function of authority' in which the province as such is more conspicuously 'supreme' and 'directly under the Crown as its head.' Indeed there is a sense in which the provincial control of the public domain served an even more fundamental purpose. It is more than the cornerstone of Confederation. It was part of the foundation, the very bed-rock upon which the whole edifice was built, for without responsible government and its first corollary, the 'grant of full rights over the land,' the provinces which entered into Confederation in 1867 would never have been in a position to aspire to a British and transcontinental Dominion.

Now while it is seldom that a great principle has been so discerningly built into the foundations of a nation, it is doubtful if a parallel can be found to the half-century of devious expediency during which this fundamental principle has remained in abeyance in the case of Manitoba. Beyond a doubt this Province has been the Cinderella of Confederation; it has been her misfortune for fifty years to sit among the ashes and aspire only to the commonplace rights and privileges of the

more fortunate provinces of the Dominion. She inherited from the Riel Insurrection an unenviable prejudice from the rest of Canada that was as meaningless as it was unjust. Within her boundaries for fifty years have been fought out the bitter controversies of Quebec and Ontario. The very 'school clause' of the *Manitoba Act* was devised 'according to the system of the Province of Quebec.'① Railway communications east and west were a by-product of the terms of union with British Columbia, and the public domain was withheld because the Canadian Pacific Railway 'must be built by means of the land through which it had to pass.'

With regard to 'land revenues' it was twelve years before any fiscal concessions were made to alleviate the poverty in that respect which had been imposed upon the province 'for the purposes of the Dominion.' 'Land revenues' elsewhere were the normal function of the public domain in rapidly developing communities. With millions of acres of the richest soil in North America within her boundaries, this province was starved in the midst of plenty. Even in 1882 the grant of $45,000 'in lieu of lands' was made 'as is done in Prince Edward Island.' The sum of $100,000 to which the subsidy in lieu of lands was increased in 1885 had been suggested by the case of British Columbia for the 'railway belt' through the Rocky Mountains transferred 'in trust' to the Dominion.

In default of convenient British precedents with regard to the land, the public domain of Manitoba was administered in accordance with American—or the perversion of American—precedents which had been superceded seventy-five years ago in the British Empire by the practice of responsible government. The Dominion has done to Manitoba what the Government of the United States has never done to the smallest 'Land State' of the Union, and the Government of the United States has done to all the 'Land States' of the Union what George III never contemplated for Massachusetts.

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①Clause 7 of the 'secret' list of rights upon which the discussions upon the *Manitoba Bill* were based. Archbishop Taché's *Letter* to the *Winnipeg Free Press*, Dec. 27, 1889.

Had the Dominion instead of the Province of Ontario commanded the services of Sir Oliver Mowat, the boundaries of Manitoba would almost undoubtedly have included a littoral on Lake Superior in the Ontario boundaries disputes of the 'eighties. When the boundaries of the province were extended in 1912, the northern boundary was determined by the case of Alberta and Saskatchewan in 1905. Even in 1912 the boundaries of Ontario and Quebec had to be so generously extended also that the Maritime Provinces have lodged claims for compensation for which it is proposed to secure equal priority with the half-century of 'provincial rights over the land' in Manitoba. It must be admitted that in the 'railway strip' to Port Nelson which was granted also to Ontario through Manitoban territory in 1912, there is a refinement of this traditional policy for which it would be difficult to find a parallel. 'Chartered territory' which could not be entrusted to the beneficial control of Manitoba because it had been 'purchased' by the Dominion from the Hudson's Bay Company, is granted to Ontario not as 'ungranted or waste lands' under beneficial control within its own boundaries but as property in full economic ownership within the boundaries of Manitoba. At the same time the old subsidy to this province ('in consideration of the lands within Manitoba appropriated by the Dominion' for railway purposes) and the 'swamp lands'—the one moiety or semblance of 'provincial rights over the land' ever enjoyed by this province—were surrendered in order to 'place Manitoba on a basis of equality with Saskatchewan and Alberta.' ①

It is submitted that the time has come to right this half-century of vested wrong by an Imperial amendment to the *British North America Acts* which shall leave this province like the other provinces of the Dominion 'supreme' over its own lands 'directly under the Crown as its head.' Instead of aspiring to the commonplace rights and privileges of more fortunate states and provinces 'as is done in Prince Edward Island,' 'according to the system of the province of Quebec,'

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①Premier Borden to Premier Scott, Jan. 9, 1913.

as was done in British Columbia, as was said to obtain in the 'Land States' of the American Union, it would not be amiss to consider the 'Natural Resources Question' upon the merits of the case of this province. Let it be repeated that this can be done only by a resolute adherence to 'first principles.' The sound constitutionalism which has guided so judiciously the relationships of the Dominion within the Empire is confronted within the Dominion itself with a problem which will require for its solution the most signal contribution to the constitutional structure of Confederation since the original conditions under the *British North America Act* of 1867—'subject to the provisions of this Act'—were abrogated by the *Manitoba Act* almost exactly fifty years ago. 'The Natural Resources Question' may thus be said, without false modesty, to constitute one of the most important problems of the Dominion. Its settlement would set the seal of full provincial status under the *British North America Act* of 1867 upon three Canadian 'colonies,' and would enable the Dominion, with its house in order, to move forward discerningly among the British nations of the Empire and the other nations of the world.

SUMMARY

1. Sound constitutionalism at Ottawa is the necessary counterpart of the 'fight for provincial rights' (*Premier Norquay*) in Manitoba. It is fitting—and necessary—that relationships within the Empire and abroad, and the anomalies of Confederation at home, should be settled at the same time and by the same methods.

2. The ascendancy of British principles becomes definitely traceable since the *Alberta* and *Saskatchewan Acts*. Arguments against provincial control of the public domain 'would have justified the retention by the Imperial government up to the present time of every acre of Crown Lands in Canada.' 'The people of the northwest when they are granted provincial rights . . . are entitled to the control of these lands.' (*Sir Robert Borden.*)

3. 'The restitution of the public lands to the Provinces of Alberta and Saskatchewan upon fair terms' was advocated in 1907; the 'just recognition' for the Prairie Provinces 'of their

undoubted rights to their public lands and natural resources' in 1911; though by February, 1914, serious and complicated 'difficulties . . . have now to be surmounted.'

4. On December 22, 1913, the three western Premiers had submitted their proposal:

> 'that the financial terms already arranged between the 'provinces and the Dominion as compensation for lands 'should stand as compensation for lands already alienated 'for the general benefit of Canada';

and subsequently urged in its defence 'two fundamental principles' already conceded, (*a*) the right of the provinces to the public domain, (*b*) 'their right to compensation for such portions of the same as have been alienated for the general benefit of Canada.' (*Premiers Scott, Sifton and Norris.*)

5. The 'Resources Question' was then overshadowed by the war until the Conference of November, 1918, when it was submitted to 'representatives of all the provinces of Canada' in their provincial capacity, with the intimation that 'the Government was disposed to give favourable consideration . . . provided that it was mutually satisfactory to the other Provinces of the Dominion.'

6. A resolution of 'the other Provinces of the Dominion' demanded:

> 'that in the event of the special allowances in lieu of 'lands . . . being maintained in whole or in part, 'a proportionate allowance . . . be granted to each 'of the other provinces of Confederation—reserving however 'any special claim . . . upon any other ground 'whatsoever.'

7. Pending a return to normal federal channels the 'Natural Resources Question' would seem to have been consigned to the limbo of inter-provincial controversy whence ghosts of unburied causes seek in vain for deliverance.

8. Two fragmentary features of the 'Resources Question' challenge attention, (*a*) the suggestions of 'certain reservations' in connection with the return of the public domain to the Prairie Provinces, and (*b*) the intervention of other provinces in a purely provincial capacity in the 'Resources Question' of the West.

9. With regard to the former, any arbitrary 'conditions and restrictions' with regard to lands would amount to a concession of 'the principle that the government do not intend

to hand them over.' Instead of the province being 'supreme' over its own public domain 'directly under the Crown as its head,' the Dominion would still be exercising an intolerable 'suzerainty'.

10. The primary functions of the public domain are fiscal. 'Colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community.' (*Colonial Office.*) P.E.I. had 'no lands the proceeds of the sale of which could, as in other British Colonies, be appropriated towards local improvements and the maintenance of government.' (*Can. Privy Council.*) The 'guiding principle' of Confederation with regard to the public domain was 'that the provinces were entitled to the public lands as a source of revenue to administer to the growing wants of the population in each Province.' (*Sir Wilfrid Laurier.*)

11. These normal functions of public lands (exemplified even in this province in 'school lands,' 'swamp lands,' etc.), were denied to Manitoba with regard to millions of acres of some of the richest lands in North America. The Prairie Provinces are entitled to adequate compensation if the old system is to be continued, and to statutory safeguards in any case ensuring full provincial status without any qualifications whatever.

12. The reference of the 'Resources Question' to the 'representatives of all the provinces' is more difficult to discuss with equanimity because it would seem to leave the fiduciary obligations of the Dominion in administering the public domain of the Prairie Provinces to be determined by the other provinces of Canada on the basis of fiscal expediency; and acquiescence would 'virtually establish an admission on our part that the other Provinces have a right to share in the beneficial interest in our public domain.' (*Premiers Norris, Martin and Stewart.*)

13. 'The Natural Resources Question' is not two questions but one. It is not a question of lands and a question of subsidy, but a question of lands as from 1870. The 'Resources Question' is one question and the Federal Government alone must be its prophet. Compensation for alienated lands is thus the equity due to this province in respect of lands as from the assumption of responsible government.

14. 'The wisdom of these three Prairie Provinces having handed over to them the public lands is a question between the federal Government and the provinces interested and affected.' (*Premier Fleming of New Brunswick.*) 'The question of the

wisdom of giving the provinces the lands is one between the Dominion Government and the western provinces.' (*Premier Murray of Nova Scotia.*)

15. This is a problem not of adjusting subsidies or liquidating provincial claims, but of consummating Confederation. Provincial control of public lands was the cornerstone, the foundation of the *B.N.A. Act* of 1867, and the first corollary of responsible government. In this respect Manitoba has been the Cinderella of Confederation; grudgingly admitted to rights that were elsewhere taken for granted, 'as is done in P.E.I.', as was done in B.C., as was said to obtain in the 'Land States' of the American Union. It would not be amiss to settle 'the Natural Resources Question' upon the merits of the case of this province.

16. The time has come to right this half-century of vested wrong, and by Imperial statute to make this province like the other provinces of the Dominion, 'supreme' over its own lands 'directly under the Crown as its head.'

APPENDIX.

GENERAL SUMMARY.

I. INTRODUCTION: THE NATURE AND SCOPE OF THE INQUIRY.

1. A very representative convention at Fort Garry (February, 1870) claimed among the terms of proposed union with Canada 'full control of all the public land' for the 'Local Legislature.' Similar claims were advanced on at least three other occasions by less representative sections of the community during the process of transfer of Rupert's Land to Canada. The provincial control of the public domain has been advocated almost continuously for fifty years.

2. The principles underlying this claim, however, are much older than the Province of Manitoba or the Dominion of Canada. The public domain has always been, and still remains, in title 'vested in the Crown' which is 'one and indivisible throughout the Empire' (*Lord Haldane in P.C.*); but two functions with regard to it, viz. (*a*) the administration of the same, and (*b*) the beneficial interest therein, were long in dispute until both were unreservedly conceded to self-governing provinces upon their undertaking the duties and obligations of 'responsible government.'

3. The claims of Manitoba are in exact conformity with this double principle as applied to the period of her status as a Canadian province since 1870, viz. (*a*) the unrestricted control of natural resources hitherto unalienated, and (*b*) ample recognition of full beneficial interest not only in these but in those already alienated by 'the Government of Canada for the purposes of the Dominion.'

4. The issue, therefore, is as fundamental as was the control of crown lands, the 'clergy reserves,' etc., in Upper Canada over eighty years ago. In fact it is largely the same issue: whether Manitoba is a 'colony' or a province of the Dominion.

5. The principles then established have been applied everywhere to self-governing provinces under 'responsible government'; to the Maritime Provinces and to 'Canada' long before Confederation; to Newfoundland and New Zealand

and the provinces of the Australian Commonwealth; to all the original provinces of the Canadian Confederation as safeguarded by the *B.N.A. Act*, 1867, section 109; to British Columbia and Prince Edward Island which have since entered Confederation; to all the self-governing provinces and Dominions of the Empire, in fact, but the Prairie Provinces of Canada.

6. The present inquiry, therefore, may be simplified by outlining at the outset the range of historical evidence to be examined in the following sections:

(II.) *British Principles with Regard to the Public Domain*, as established in Canada at 'responsible government.'

(III.) The conditions determining *The Surrender of Chartered Rights in Rupert's Land and the 'Transfer' to Canada in 1870.*

(IV.) The circumstances of *The 'Transfer' and Provincial Status for Manitoba* in 1870.

(V.) An examination of *British Principles and Canadian Practice in British Columbia* in 1871.

(VI.) A similar examination of *British Principles and Canadian Practice in Prince Edward Island* in 1873.

(VII.) An outline—in humiliating contrast with British practices elsewhere—of *Federal Policy and Provincial Poverty in Manitoba after 1870.*

(VIII.) A discussion of the 'subsidy in lieu of lands' in 1882 and the federal avowal of *American Precedents for a British Province.*

(IX.) An outline of the return to sound British constitutional principles and their application to the present 'Natural Resources Question': *British Principles in the Ascendant: Province or Colony?*

II. BRITISH PRINCIPLES WITH REGARD TO THE PUBLIC DOMAIN.

1. The claim to (*a*) the administration of the public domain, (*b*) the beneficial interest therein, formed an integral part of the conflict for 'responsible government' in Canada.

2. Both these functions were definitely conceded more than seventy-five years ago to provinces under 'responsible govern-

ment,' Imperial beneficial control being definitely renounced by statute (15 & 16 Vic., c. 39 and 17 & 18 Vic., c. 118). Both functions, therefore, were implicit in provincial status for all the original provinces of Canada.

3. When these provinces united to form Confederation these rights were confirmed in *B.N.A. Act*, 1867, s. 109.

4. Similarly in Newfoundland, New Zealand, the provinces of the Australian Commonwealth, the same principles are uniformly in operation. 'Colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community.' (*Colonial Office*, 1864, *re* Rupert's Land).

5. 'The plan adopted in every case of the grant of responsible government . . . took the form of a grant of full rights over the lands in exchange for a civil list' (*Keith*), viz., a compact involving the grant of the beneficial control of the public domain in return for undertaking the obligations of self-government. Manitoba has discharged the duties of 'responsible government' with full 'civil list' since 1870 and has been denied for fifty years 'full rights over the lands in exchange.'

6. Even Lord Durham's proposals with regard to Imperial control of crown lands for purposes of scientifically directed colonization were still-born in Canada, and the only alternative was that 'the whole control of the property should be vested in the most ample and unconditional manner in the Colonial Legislature. This is required by every principle of justice.' (*Buller*).

7. The constitutional rights which the original provinces of Confederation now seek to deny to the Prairie Provinces in the twentieth century are the same rights which they themselves vindicated, even against Lord Durham, during the first half of the nineteenth. The arguments employed against the provincial rights of the Prairie Provinces 'would have justified the retention by the Imperial government up to the present time of every acre of Crown Lands in Canada.' (*Sir Robert Borden* in 1905).

8. In respect of public lands, Manitoba is still a 'colony' of the Dominion, with this difference for the worse, that whereas the crown lands before 'responsible government' were administered by residents of the province 'for purely colonial purposes' and 'for local or personal objects' (*Buller*) those of Manitoba are administered, by Dominion statute, 'by the Government of Canada for the purposes of the Dominion.'

III. THE SURRENDER OF CHARTERED RIGHTS IN RUPERT'S LAND AND THE 'TRANSFER' TO CANADA IN 1870.

The reluctance of other provinces to concede to Manitoba the status in respect of public domain which they themselves have always enjoyed has long been defended upon the claim that Rupert's Land was 'purchased' from the Hudson's Bay Company and became, therefore, the 'property' of Canada.

(A)—THE NATURE OF THE 'PURCHASE.'

1. The H.B.C. prepared in 1864 to recognize a Crown Colony in Rupert's Land provided the Company retained extensive proprietary control of the land.

2. This proposal was refused by the Colonial Office because 'colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community.'

3. The H.B.C. therefore, demanded (1868-9) 'the payment, as compensation, of a sum of hard money' for the surrender of their chartered rights.

4. Canada, however, insistently urged direct cession by the Crown (by the B.N.A. Act, 1867, s. 146) 'without negotiations with any third party in the case.' Even when indemnity for surrender of chartered rights became necessary, Canadian delegates regarded it as the 'cost of legal proceedings necessary . . . to recover possession.' Conclusive evidence of 'cession' as the official view of Canadian Government.

5. Insistence of H.B.C. on monetary compensation led to the *Rupert's Land Act*, 1868, providing:

(*a*) Surrender of all rights under the Charter in Rupert's Land to the Crown 'upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company.'

(*b*) Union with Canada by Imperial Order in Council as under *B.N.A. Act*, 1867, section 146.

6. Canada was forced into this monetary transaction by amendment to the *Rupert's Land Act* in the House of Commons, by proviso that 'no Charge should be imposed by such Terms upon the Consolidated Fund of the United Kingdom.'

7. Canada, therefore, was forced to indemnify the H.B.C. for the surrender of chartered rights in Rupert's Land to

the Crown, and this was the only part of either transaction involving 'compensation' of any kind.

8. Object of whole transfer was not to perpetuate proprietary administration 'for the purposes of the Dominion' but that the old 'Proprietary Rights,' etc., of the Company should be 'absolutely extinguished' (*Ruperts' Land Act*) in order to expedite 'settlement as a part of the British Colonial System.' (*Colonial Office*).

9. The transfer from the Crown to Canada by Order in Council, therefore, was by cession with all constitutional implications unimpaired: 'the surrender . . . by the Company to the Crown and the transfer . . . to the Canadian Government, are Acts of State, authorised by Imperial Statute, and will have all the force and permanence of fundamental law' (*Canadian delegates*).

10. The £300,000 was raised by loan, guaranteed by the British Government, 'the principal to be repaid on 1st April, 1904.'

(B)—The Procedure and its Implications.

1. Two distinct and fundamental transactions were involved:

(*a*) surrender of the Hudson's Bay Charter rights in Rupert's Land to the Crown 'upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company;'

(*b*) cession of 'Rupert's Land' and 'North-Western Territory' to Canada by Imperial Order in Council of June 23, 1870.

2. The statutory basis of (*a*) was *Rupert's Land Act*; that of (*b*) was *B.N.A. Act*, 1867, section 146, reiterated in *Rupert's Land Act*, section 5.

3. The surrender of chartered rights in Rupert's Land by the Hudson's Bay Company to the Crown was dated November 19, 1869; the surrender was received by the Colonial Office and £300,000 paid on May 11, 1870; the surrender of chartered rights was formally accepted by the Crown by Order in Council of June 22, 1870; 'Rupert's Land' and 'North-Western Territory' united to Canada on July 15 by Imperial Order in Council of June 23, 1870.

4. The 'Terms and Conditions' involving 'compensation' provided for in the *Rupert's Land Act* apply exclusively to Rupert's Land. The whole area outside Rupert's Land ('the North-Western Territory'), therefore, must be regarded as

coming directly to Canada from the Crown by cession under *B.N.A. Act*, 1867, section 146, and without even the fictitious appearances of preliminary 'purchase.' This is clear from the correspondence of the Colonial Office at the time of the *Rupert's Land Act*, the attitude of the Canadian Government, etc.

5. Mainland district of British Columbia already created (1858) out of 'licensed' territory in same relationship to H.B.C. as 'North-Western Territory', yet full beneficial control of public domain was vested in B.C. in 1871.

6. Similarly, districts from the 'chartered' territory of Rupert's Land were added both to Ontario and to Quebec, with full beneficial control vested in these provinces, despite so-called 'purchase' by Canada in 1870. Even within boundaries of Manitoba, Ontario was granted property rights over 'railway strip' to Port Nelson at the *Manitoba Boundaries Extension Act* of 1912.

7. Manitoba, Saskatchewan and Alberta appear to be the only provinces of Canada which cannot be entrusted with beneficial control over either the 'licensed' or 'chartered' territory of the H.B.C. ceded to Canada in 1870.

8. By the constitutional procedure scrupulously followed in the transfer, therefore, both Rupert's Land and the North-Western Territory came to Canada not from the H.B.C. by 'purchase' but from the Crown by 'Acts of State, authorised by Imperial Statute' with 'all the force and permanence of fundamental law.'

9. In 1871, British Columbia (see Chapter V) received full beneficial control over public domain, both 'licensed' area ceded in 1858 and Vancouver Island which has been re-purchased from the H.B.C. in 1867 for £57,500. It is submitted that Manitoba is entitled to the same fundamental rights as from 1870, 'as a part of the British . . . System.'

IV. THE 'TRANSFER' AND PROVINCIAL STATUS FOR MANITOBA.

1. The *Manitoba Act* provided that upon transfer to Canada by Imperial Order in Council, Manitoba should be 'one of the Provinces of the Dominion of Canada.' In the case of this province, therefore, there has been no preliminary period of territorial status, and British principles thus apply with peculiar cogency and directness to the whole Canadian period of our history since 1870.

2. The animosities of the Riel Insurrection and the

motives under which provincial status was sought and secured in the *Manitoba Act* long inspired an unenviable and rather undiscriminating prejudice against this province.

3. With regard particularly to the beneficial control of the public domain, the conduct of Riel in 1870 has penalized the rest of the province for fifty years. 'They wished to have all the lands . . . as in other Provinces . . . The land could not be handed over to them . . . A large Province . . . might interfere with the general policy of the Government . . . The land legislation of the Province might be obstructive to immigration.' (*Sir John A. Macdonald* in debate on *Manitoba Bill*).

4. The *Manitoba Act* was based on a secret 'list of rights' which remained generally unknown to the inhabitants of Manitoba for nineteen years. Both the British and Canadian authorities refused to regard the *Manitoba Act* as 'subject to confirmation by the "Provisional Government" which would have involved a recognition of Riel and his associates.' (*Sir Clinton Murdock*). Manitoba was unique, therefore, among the provinces of Canada in that many of the terms of union —and particularly those relating to the public domain— were imposed upon the inhabitants of this province not only without their consent but even without their knowledge.

5. Section 30 providing for the administration of 'All ungranted or waste lands . . . by the Government of Canada for the purposes of the Dominion' was unique even among the provisions of the *Manitoba Act*. 'To condone for this refusal' (of the 'control of all the lands of the North-west') the Dominion Government 'gave to the children of the half-breed inhabitants . . . one million four hundred thousand acres of land, which had not been asked for.' (*Archbishop Taché*). With this removal of opposition to federal control of provincial lands, no precautions were taken to safeguard for the future the territorial rights of Manitoba as a British and Canadian province.

6. It is noteworthy that the provisions in the *Manitoba Act* relating to the public domain contravened every expression of opinion, both English-speaking and French, in every list of rights drawn up during the process of transfer. 'Full control of all the public land' for the 'Local Legislature' had been stipulated by the Convention of February, 1870, even upon the basis of territorial status.

7. Whatever the requirements of the hour may have been, therefore, with regard to the temporary 'control' of the public domain of the Province in 1870, the indefensible

phrase 'for the purposes of the Dominion' in the *Manitoba Act* must be regarded as an unwarranted and deliberate violation of fiduciary obligations on the part of the Dominion. The repetition of this phrase in the *Saskatchewan Act*, the *Alberta Act*, and even in 1912 in the *Manitoba Boundaries Extension Act* would seem to indicate in the harshest and most uncompromising terms the definite 'colonial' subordination of the Prairie Provinces.

V. BRITISH PRINCIPLES AND CANADIAN PRACTICE IN BRITISH COLUMBIA.

1. Vancouver Island was granted to the Hudson's Bay Company by Letters Patent of January 13, 1849, and was re-purchased by the Imperial Government on April 23, 1867, for £57,500.

2. The beneficial control of Vancouver Island, however, was not appropriated by the British Government as the public domain of Manitoba was appropriated (altogether without 'purchase' in that sense) by Canada 'for the purposes of the Dominion.'

3. There was no attempt to indemnify the British Government for the £57,500 by administering the land 'for the purposes of' Great Britain; while Canada 'by obtaining control of these lands' (Manitoba) sought

> 'to obtain repayment of the disbursement of the £300,000. '. . . The expense would be defrayed by that means 'instead of being charged against the people of the 'Provinces of Ontario, Quebec, Nova Scotia, and New 'Brunswick. That could be done, however, only by 'carrying out that policy of keeping the control of the 'lands of the country, and . . . they had determined 'to do so.' (*Sir John A. Macdonald*).

4. The mainland colony of 'British Columbia' was created (1858) from districts which had formerly been 'licensed' areas of the Hudson's Bay Company, corresponding to the 'North-Western Territory' of the Prairie Provinces.

5. The two districts, therefore, which were united in 1866 under the name of British Columbia, resembled 'Rupert's Land' and the 'North-Western Territory' in having been 'granted' and 'licensed' territory respectively of the Hudson's Bay Company.

6. It was only in clause 14 of the terms of union that provision was first made for 'the introduction of responsible

government when desired by the inhabitants of British Columbia.' Even the Address pursuant to *B.N.A. Act*, 1867, section 146, had to be passed by legislative council, which was then for the first time predominantly elective (nine out of fifteen members).

7. British Columbia thus acquired control of public domain and beneficial interest therein before having exercised responsible or even fully representative government. Manitoba assumed obligations of responsible government fifty years ago and has been denied ever since both functions with regard to the public domain.

8. Upon entering Confederation, B.C. assumed almost automatically the beneficial control of public domain. The issue was neither raised nor discussed nor specifically mentioned in the articles of union, and British principles thus prevailed with the first provisions for 'the introduction of responsible government.'

9. Even the 'railway belt' for the transcontinental railway stipulated by B.C. as the price of union, was transferred to Canada 'in trust' at an annual payment of $100,000. This subsidy, therefore, must be regarded as the interest on the capital fiscal value to the province of lands thus administered 'in trust' by Canada for the purposes of the Dominion.

10. Within this category, it is submitted, must be regarded the subsidy 'in lieu of lands' first granted to Manitoba in 1882 during the projection of the C.P.R. The lands alienated by Canada in Manitoba since 1870 have been administered by statute (33 Vic., c. 3, s. 30) 'for the purposes of the Dominion,' and ought to be accounted for like the railway lands of British Columbia upon a similar fiduciary basis.

VI. BRITISH PRINCIPLES AND CANADIAN PRACTICE IN PRINCE EDWARD ISLAND

1. In Prince Edward Island, automatic conformity, as in British Columbia, with British practice was no longer possible because the public domain had already been granted to absentee proprietors nearly a century before Confederation and long before the period of 'responsible government.'

2. The Colonial Office, in fact, had urged the case of Prince Edward Island against the old system of control of the public domain in Rupert's Land in the beneficial interest

of those (H.B. Co.) who did not themselves constitute the community:

> 'In an unsettled colony there is no effectual mode of 'taxation for purposes of government and improve-'ment . . .
>
> 'In Prince Edward Island . . . the result has not been such as to invite imitation . . .
>
> 'It is clear that colonists of the Anglo-Saxon race look 'upon the land revenue as legitimately belonging to the 'community.'

3. The 'land question,' therefore, like the 'railway question' in B.C., was the chief issue in discussing terms of union, and there were two distinct phases of the problem:

(*a*) the loss of Crown lands and consequent lack of normal land revenues of British provinces 'for purposes of government and improvement;'

(*b*) the survival of proprietary tenures.

4. The first proposals from the Canadian Privy Council (December 14, 1869) with regard to these two phases of the 'land question' suggested:

(*a*) a sum of $800,000 'as a compensation for the loss of such Crown Lands' ('in lieu of the lands thus granted 'by the Crown') 'the proceeds of the sale of which 'could, as in the other British colonies, be ap-'propriated towards local improvements and the 'maintenance of Government;'

(*b*) that the Dominion should 'use their influence to 'secure such legislation as will enable the Govern-'ment of the Island to purchase the land now held 'in large blocks.'

5. These terms were not regarded by the Island Government as 'sufficiently liberal' to 'establish this Colony in a position as regards land tenures and territorial revenues similar to that occupied by the adjoining Provinces.' Two demands, therefore, were formulated (*Committee of Council*, P.E.I., January 7, 1870):

(*a*) 'indemnity . . . for loss of Territorial Revenue;'

(*b*) 'a full and immediate settlement of the Land tenure.'

6. These requirements were conceded in the terms of union (March 7 and May 15, 1873) by the following provisions:

(*a*) indemnity of $45,000 per annum (still paid) since the Island Government had lost their Crown lands and 'consequently enjoys no revenue from that source for the construction and maintenance of local works;'

(*b*) a loan from the Dominion not to exceed $800,000 at 5 per cent. per annum 'for the purchase of lands now held by large proprietors.'

7. It is seen, therefore, that the Dominion, to whom the beneficial control of the alienated lands of the Island had not belonged, and to whom, therefore, 'no purchase-money or rents of land have been paid' (*P.E.I. Council*) agreed nevertheless to pay P.E.I. an annual subsidy 'in lieu of the lands thus granted by the Crown' and in default of 'revenue from that source for . . . local works.' This subsidy represents a capital sum of $900,000, $100,000 in excess of that originally offered by Canada (see 4 (*a*) above) and declined by P.E.I. as not 'sufficiently liberal.'

8. With regard to the other phase of the question, the 'settlement of the Land tenure,' the sums advanced by the Dominion enabled the Island to expropriate the proprietary holdings under the terms of the *Land Purchase Act* of 1875 and its amendments. These expropriated lands became automatically revenue-producing public domain, yielding during the twenty-one year period 1879-1900 alone (which does not include the most productive years) more than the total capital sums advanced by the Dominion.

9. One transaction, therefore, implies the retroactive beneficial interest of the province in lands alienated from without for purposes other than those of the community; the other implies the right to the beneficial control of the public domain still available. Both provisions are seen to be in conformity with sound British principles already outlined as inherent in provincial status since the concession of 'responsible government.'

10. In Manitoba the only obstacle to precisely similar claims is the Dominion Government itself. In P.E.I. alienations had been made by the Crown for over a century, and long before the period of 'responsible government'; in Manitoba alienations have been made for fifty years after provincial status 'by the Government of Canada for the purposes of the Dominion.' Even the subsidy of Manitoba 'in lieu of lands' was conceded ('as is done in P.E.I.' viz., 'in lieu of lands thus granted by the Crown') only twelve years

after provincial status (1882) and after the Dominion had determined to appropriate for railways alone in the West an acreage seventy times the whole area of P.E.I.

11. With regard to resources hitherto unalienated, the Dominion enabled P.E.I. to expropriate the lands of the proprietary holders. In Manitoba the Dominion Government is still playing the rôle of the proprietary grantees themselves in administering the public domain by statute, 'for the purposes of the Dominion.'

VII. FEDERAL POLICY AND PROVINCIAL POVERTY IN MANITOBA AFTER 1870.

1. The years of controversy for 'provincial rights' after 1870 were 'neither fair to the Province nor creditable to the Dominion' (*Premier Norquay*). The necessity of returning to first principles would seem to be self-evident. The issue is too fundamental—it has already played too profound a part in the political development of British peoples all over the world—to admit here of casual adjustment or evasion.

2. The only feasible settlement is that which is everywhere prevalent in other provinces and Dominions of the Empire, viz., 'exactly the same control over their lands as is enjoyed by the people of the other provinces . . . When they are granted provincial rights . . . they are entitled to the control of these lands just as much as the people of the eastern provinces . . . I see no distinction.' (*Premier Borden* in 1905).

3. Manitoba is thus entitled to recognition of full provincial status as from 1870, when it was 'granted provincial rights'; and this involves (*a*) unrestricted beneficial control of all resources hitherto unalienated, and (*b*) ample recognition of beneficial interest in the public domain alienated 'by the Government of Canada for the purposes of the Dominion.'

4. A large measure of federal 'control' was justifiable in 1870, in order to build C.P.R., encourage immigration, effect union with B.C., etc.; but it was less than just to achieve these great 'purposes of the Dominion' at the expense of the constitutional rights of Manitoba.

5. It cannot be gainsaid moreover that in order to reconcile a reluctant public opinion in the rest of Canada to these great national enterprises, the Federal Government construed the administration of the public lands into a species of 'ownership' implying a warrant to alienate them

without accountability to the province: 'The land could not be handed over to them . . . The Pacific Railway must be built by means of the lands through which it had to pass . . . They would be in a position to obtain repayment of the disbursement of the £300,000.' (*Sir John A. Macdonald*). The public domain in the West 'had been given up for nothing.' (*Sir George Cartier*). 'The whole of Manitoba was acquired by the Dominion by purchase . . . and thus became the property of the Dominion.' (*Can. Privy Council*). 'The expenditure in construction (of the C.P.R.) and in cash subsidies may be regarded as an advance to be repaid from the lands.' (*Can. Privy Council*).

6. The attitude of 'purchase,' of 'ownership,' of 'property' 'bought' and 'possessed' was reflected even in the statutory basis of the administration of the 'Dominion Lands.' The *Manitoba Act* was largely *ultra vires* of Federal Parliament—'of more than doubtful validity.' (*Keith*). Even provisions with regard to 'ungranted or waste lands' were impugned both then and since until held to be validated by *B.N.A. Act*, 1871.

7. This statute confirms *Manitoba Act* 'for all purposes whatsoever.' The two phrases, therefore, 'for the purposes of the Dominion' and 'for all purposes whatsoever,' are scarcely worthy of the fiduciary obligations of the Dominion towards Manitoba as 'a part of the British . . . System.' The one phrase was devised without the consent or even knowledge of the community directly concerned and in contravention of every recorded expression of their wishes upon the subject; the other was drafted at Ottawa as a perfunctory *carte blanche* for the Federal Government. They form the statutory basis upon which over 18,000,000 acres of Manitoba have been alienated forever from provincial control.

8. The period after 1870 in Manitoba is not pleasant to reflect upon. The province was impoverished in a fiscal sense by means of the public domain within its own boundaries. In order to build the C.P.R. and encourage immigration the Dominion deprived the province of all sources of 'territorial revenues' at the same time as it added intolerably to the obligations of the province for 'local works.' Meanwhile Manitoba made the highest per capita contribution in Canada to federal customs revenues ($10.76 per annum for 1874-1883 as compared to $2.41 in P.E.I.) From a fiscal standpoint 'a large addition to the population' was 'nothing short of an evil in disguise.' The province was forced into abject parsimony. The grant of $26,746 was made on

condition that government be 'simplified and cheapened by the abolition of the second Chamber.'

9. Subsidy of $100,000 per annum 'in lieu of lands' was demanded in 1881 'in consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway'; pending a decision the Dominion advanced $50,000 at 5 per cent. on debt account to meet 'the immediate necessities of the Province.'

10. Subsidy of $45,000 was granted in 1882 'as is done in P.E.I.' and 'intended to close any negotiations on that subject for the next ten years.'

11. Increased subsidy of $100,000 in 1885 was made contingent upon 'finality clause' which has left a sense of humiliation deeper even than 'disallowance' and 'the monopoly clause' of the C.P.R. upon the political traditions of the province.

VIII. AMERICAN PRECEDENTS FOR A BRITISH PROVINCE.

1. Two considerations were chiefly responsible for the agitation for 'provincial rights over the land', viz., the intolerable financial burdens for 'local works' on account of the free homestead and immigration policy of the Dominion, and the practice of lavish grants for railways.

2. Claims of Manitoba (*Memorandum*, Feb. 12, 1881) were advanced (*a*) that a subsidy of $100,000 (the same as in B.C.) be granted 'in consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway', (*b*) that 'the residue of ungranted land shall be handed over to the Province for the purpose of local revenue.'

3. The case of P.E.I. ($45,000) was substituted by the Dominion for that of B.C. ($100,000), and the grant was eventually made (1882) 'as is done in P.E.I.' (*Report of Committee of Can. P.C.*) It may be contended, therefore, that both the original claim 'in consideration of the lands within Manitoba appropriated . . . for the building of the Canadian Pacific Railway' and the grant substituted for it 'as is done in P.E.I.', are based not upon future control of 'ungranted or waste lands in the Province' but upon lands already permanently alienated without regard to the beneficial interest of the community. (Cf. the proposals of Dec. 22, 1913, 'that the financial terms already arranged . . . as compensation for lands should stand as compensation for lands already alienated for the general benefit of Canada.')

4. 'Swamp lands' were transferred to the province in 1884, but the subsidy of $100,000 in lieu of lands in 1885 was made contingent upon the 'finality clause'. This completed the discomfiture of the province in the attempt to secure 'payment for the lands already disposed of . . . within the Province' and the 'control, management and sale of the Public Lands within its limits, for the public uses thereof.'

5. The 'subsidy in lieu of lands' was interpreted even by Sir Wilfrid Laurier as proof that the 'guiding principle' of Confederation in respect of lands was 'not absolutely departed from in the case of Manitoba.' The principles at the root of the whole matter, however, were not conceded, and the Dominion met the demand 'that the residue of ungranted land shall be handed over to the Province for the purpose of local revenue' by one of the most astonishing avowals in Canadian constitutional history.

6. 'The whole of Manitoba was acquired . . . by purchase . . . and thus became the property of the Dominion, and stands really . . . in the same position as lands in the Territories of the United States, which are not given to new States . . . but remain the property of the United States.' (*Report of Committee on P.C.*, approved March 7, 1882).

7. 'The Government . . . purchased at a large price 'in cash, all the rights . . . in and to the territory out 'of which the Province of Manitoba has been formed; it 'incurred, further, a very large expenditure to obtain and 'hold this territory in peaceable possession, and . . . in 'extinguishing Indian titles and maintaining the Indians, so 'that the Dominion Government has a very large pecuniary 'interest in the soil . . .

'The expenditure in construction (C.P.R.) and in cash 'subsidy, may be regarded as an advance, to be repaid from 'the lands . . .

'It ("the Federal Government of the United States") 'rigidly retains the public lands of the State except those it 'may appropriate for specific purposes, allotting to the 'State only swamp lands . . .

'It is expedient to recommend to Parliament a modification 'of this arrangement . . .' (*Report of Committee of P.C.*, approved May 30, 1884).

8. This avowal of American precedent was defended by federal administrations both Conservative and Liberal until

1911, though even under the American system the evidence would seem to support the claims of Manitoba.

9. A fundamental difference exists between the British and American systems. In the British Empire title to all public domain is 'vested in the Crown'; and whatever may be the difference of opinion with regard to purely statutory or legal rights of the Dominion, the constitutional or political rights of the Province to the beneficial interest in the public domain and ultimate control thereof would seem to be unimpeachable. Statutory powers of the Dominion, therefore (altogether apart from the way these were acquired), must be regarded as fiduciary in character and intermediary, under responsible government, between the Crown and self-governing provinces where full beneficial control must ultimately be vested.

10. In the United States, each separate state became, at independence, the 'successor to the Crown and colony in the ownership of the unappropriated and vacant lands' in a way which has no parallel in the British Empire.

11. The nucleus of the national 'public domain' of the United States originated in cessions to the National Government with full sovereign title, of over 400,000 square miles of hinterland by seven of the thirteen states. It is not on record that the other provinces of Canada have ceded territory to form 'Dominion Lands.'

12. The States (Maine, Vermont, Tennessee, West Virginia, Kentucky, etc.) organized without previous territorial status out of this ceded 'public domain' received full sovereign title and ownership of the lands within their boundaries. Manitoba came into Confederation as a province without previous territorial status, and her territory had been 'ceded' by the Crown by 'Acts of State, authorised by Imperial Statute', with 'all the force and permanence of fundamental law', long after the principles of responsible government with all its implications had been everywhere conceded.

13. Even Texas, annexed in 1845, received as a state without previous territorial status, the full title to public lands; and though the districts from the 'Louisiana purchase,' etc., were organized after varying periods of territorial status into 'Land States', with the public domain still vested in the National Government, measures like the *State Selection Act*, the *Distribution Act*, the 'Canal Wagon and Railroad Grants' to various states, the 'Two, Three and Five per cent. Funds', etc., are not in evidence under the American system as

applied by the Dominion to Manitoba. The U.S. Government was represented (*Committee of P.C.*, May 30, 1884) as 'allotting to the State only swamp lands.' Even these were taken away from Manitoba in 1912.

14. Unreserved avowals of American principles were made as late as 1905, at the *Alberta* and *Saskatchewan Bills*: 'This is a case in which we can go to the United States for precedents . . . Whenever a new state has been created in the American Union, the Federal Government has always retained the ownership and management of the public lands.' (*Sir Wilfrid Laurier*).

15. Basis of subsidy in 1905 and 1912 was more or less arbitrary, but the proposal of December 22, 1913 (present subsidy as 'compensation for lands already alienated') was occasioned by the necessity of reaching a common basis for the perplexing differences of status and development between the three provinces concerned.

16. Manitoba's original 'subsidy in lieu of lands' was 'in consideration of lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway'; and even the present subsidy is altogether inadequate for resources alienated for fifty years 'for the purposes of the Dominion.' Railway and H.B. Co. land sales alone (Dec. 31, 1917) amounted to $178,000,000, and there are 14,500,000 acres left.

17. Claims of Manitoba may thus be stated in less general terms as:

(*a*) Unrestricted beneficial control of all public lands and natural resources hitherto unalienated.

(*b*) Compensation at a fixed equitable rate per acre for all lands within Manitoba alienated to the H.B.C. at the transfer, and under section 30 of the *Manitoba Act* 'by the Government of Canada for the purposes of the Dominion'; such compensation to be made by way of annual payments at 5 per cent., and to be reckoned as from the date of alienation, less the amounts received as subsidies in lieu of lands.

18. The balancing of Dominion receipts and expenditures from Dominion lands is obviously a futile method of determining equitable 'compensation.' Chief alienations have been free grants, 'the purposes of the Dominion' being attained indirectly in other ways. Cf. railway land grants and free homesteads, and the high per capita customs revenues from new settlers.

IX. BRITISH PRINCIPLES IN THE ASCENDANT: PROVINCE OR COLONY?

1. Sound constitutionalism at Ottawa is the necessary counterpart of the 'fight for provincial rights' (*Premier Norquay*) in Manitoba. It is fitting—and necessary—that relationships within the Empire and abroad, and the anomalies of Confederation at home, should be settled at the same time and by the same methods.

2. The ascendancy of British principles becomes definitely traceable since the *Alberta* and *Saskatchewan Acts*. Arguments against provincial control of the public domain 'would have justified the retention by the Imperial government up to the present time of every acre of Crown Lands in Canada.' 'The people of the northwest when they are granted provincial rights . . . are entitled to the control of these lands.' (*Sir Robert Borden.*)

3. 'The restitution of the public lands to the Provinces of Alberta and Saskatchewan upon fair terms' was advocated in 1907; the 'just recognition' for the Prairie Provinces 'of their undoubted rights to their public lands and natural resources' in 1911; though by February, 1914, serious and complicated 'difficulties . . . have now to be surmounted.'

4. On December 22, 1913, the three western Premiers had submitted their proposal:

> 'that the financial terms already arranged between the 'provinces and the Dominion as compensation for lands 'should stand as compensation for lands already alienated 'for the general benefit of Canada';

and subsequently urged in its defence 'two fundamental principles' already conceded, (*a*) the right of the provinces to the public domain, (*b*) 'their right to compensation for such portions of the same as have been alienated for the general benefit of Canada.' (*Premiers Scott, Sifton and Norris.*)

5. The 'Resources Question' was then overshadowed by the war until the Conference of November, 1918, when it was submitted to 'representatives of all the provinces of Canada' in their provincial capacity, with the intimation that 'the Government was disposed to give favourable consideration . . . provided that it was mutually satisfactory to the other Provinces of the Dominion.'

6. A resolution of 'the other Provinces of the Dominion' demanded:

> 'that in the event of the special allowances in lieu of 'lands . . . being maintained in whole or in part, 'a proportionate allowance . . . be granted to each 'of the other provinces of Confederation—reserving however 'any special claim . . . upon any other ground 'whatsoever.'

7. Pending a return to normal federal channels the 'Natural Resources Question' would seem to have been consigned to the limbo of inter-provincial controversy whence ghosts of unburied causes seek in vain for deliverance.

8. Two fragmentary features of the 'Resources Question' challenge attention, (*a*) the suggestions of 'certain reservations' in connection with the return of the public domain to the Prairie Provinces, and (*b*) the intervention of other provinces in a purely provincial capacity in the 'Resources Question' of the West.

9. With regard to the former, any arbitrary 'conditions and restrictions' with regard to lands would amount to a concession of 'the principle that the government do not intend to hand them over.' Instead of the province being 'supreme' over its own public domain 'directly under the Crown as its head,' the Dominion would still be exercising an intolerable 'suzerainty'.

10. The primary functions of the public domain are fiscal. 'Colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community.' (*Colonial Office.*) P.E.I. had 'no lands the proceeds of the sale of which could, as in other British Colonies, be appropriated towards local improvements and the maintenance of government.' (*Can. Privy Council.*) The 'guiding principle' of Confederation with regard to the public domain was 'that the provinces were entitled to the public lands as a source of revenue to administer to the growing wants of the population in each Province.' (*Sir Wilfrid Laurier.*)

11. These normal functions of public lands (exemplified even in this province in 'school lands,' 'swamp lands,' etc.), were denied to Manitoba with regard to millions of acres of some of the richest lands in North America. The Prairie Provinces are entitled to adequate compensation if the old system is to be continued, and to statutory safeguards in any case ensuring full provincial status without any qualifications whatever.

12. The reference of the 'Resources Question' to the 'representatives of all the provinces' is more difficult to discuss with equanimity because it would seem to leave the fiduciary obligations of the Dominion in administering the public domain of the Prairie Provinces to be determined by the other provinces of Canada on the basis of fiscal expediency; and acquiescence would 'virtually establish an admission on our part that the other Provinces have a right to share in the beneficial interest in our public domain.' (*Premiers Norris, Martin and Stewart.*)

13. 'The Natural Resources Question' is not two questions but one. It is not a question of lands and a question of subsidy, but a question of lands as from 1870. The 'Resources Question' is one question and the Federal Government alone must be its prophet. Compensation for alienated lands is thus the equity due to this province in respect of lands as from the assumption of responsible government.

14. 'The wisdom of these three Prairie Provinces having handed over to them the public lands is a question between the federal Government and the provinces interested and affected.' (*Premier Fleming of New Brunswick.*) 'The question of the wisdom of giving the provinces the lands is one between the Dominion Government and the western provinces.' (*Premier Murray of Nova Scotia.*)

15. This is a problem not of adjusting subsidies or liquidating provincial claims, but of consummating Confederation. Provincial control of public lands was the cornerstone, the foundation of the *B. N. A. Act* of 1867, and the first corollary of responsible government. In this respect Manitoba has been the Cinderella of Confederation; grudgingly admitted to rights that were elsewhere taken for granted, 'as is done in P.E.I.', as was done in B.C., as was said to obtain in the 'Land States' of the American Union. It would not be amiss to settle 'the Natural Resources Question' upon the merits of the case of this province.

16. The time has come to right this half-century of vested wrong, and by Imperial statute to make this province like the other provinces of the Dominion, 'supreme' over its own lands 'directly under the Crown as its head.'

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